



H.O.R. PAPER NO. 13 of 2012      MP PARL: NO. 14/3/31

**REPORT**  
**OF**  
**THE JOINT SELECT COMMITTEE**  
**APPOINTED TO CONSIDER AND REPORT TO**  
**PARLIAMENT**  
**ON**  
**THE LEGISLATIVE PROPOSALS TO PROVIDE**  
**FOR PUBLIC PROCUREMENT AND DISPOSAL OF**  
**PUBLIC PROPERTY**  
**AND**  
**THE REPEAL AND REPLACEMENT OF THE**  
**CENTRAL TENDERS BOARD ACT**  
**Second Session (2011/2012) Tenth Parliament**

[Ordered to be printed]

## TABLE OF CONTENTS

---

	Page No.
<b>1. Background</b> -----	2-4
• Appointment and Terms of Reference	
• Membership	
• Secretarial Support	
• Expert assistance	
• Election of a Chairman and Quorum	
• Interim Report and Meetings	
<b>2. Deliberations</b> -----	4- 5
• Government’s policy position on Public Procurement	
• Consideration of proposal for assistance from the IDB	
• Results of the Committee’s deliberations	
• Major issues the Committee sought to resolve	
<b>3. Submissions received by the Committee</b> -----	6-10
• Discussions with the Contractor General of Jamaica	
• Discussions with officials from the World Bank	
• Consideration of Government’s policy position for informing the legislative reform of public procurement and disposal of public property	
<b>4. Conclusion</b> -----	10-11
<b>5. Recommendations</b> -----	11
<b>6. Appendices</b> -----	13-52
<i>Appendix I: Revised Policy Proposals for Public Procurement Reform</i>	
<i>Appendix III: Original Policy Proposals for Public Procurement Reform</i>	
<i>Appendix III: Minutes of Meetings</i>	
<i>Appendix IV: Attendance record of members</i>	

## BACKGROUND

---

### APPOINTMENT AND TERMS OF REFERENCE

1.1 Pursuant to resolutions passed in the House of Representatives on **Wednesday November 09, 2011** and on **Friday November 18, 2011** and in the Senate on **Tuesday November 15, 2011 and on Tuesday November 22, 2011**, a Joint Select Committee was appointed to consider and report on the Legislative Proposal to provide for public procurement and disposal of public property together with the Legislative Proposal to repeal and replace the Central Tenders Board Act.

1.2. This is the second such Committee to have been established during this Tenth Parliament. The Committee appointed in the First Session (2010/2011) was unable to complete its mandate before prorogation on June 17, 2011, and as such requested that all its work be saved and referred to any subsequent committee.

1.3. In consonance with this request, this Committee was appointed to consider and report *on the Legislative Proposal to provide for public procurement and disposal of public property together with the Legislative Proposal to repeal and replace the Central Tenders Board Act which were laid in the House of Representatives on Friday June 25, 2010 along with the work of the previous Committee appointed in the First Session of the Tenth Parliament:*

The Committee was also required to:

- (a) *consult with stakeholders, experts and interested persons;*
- (b) *send for persons, papers, records and other documents;*
- (c) *recommend amendments to the proposals with a view to improving the drafts; and*
- (d) *submit a report to Parliament within three (3) months from the date of appointment.*

1.4. Based on the above stated reporting period, the deadline for the Committee to report to Parliament was set as **February 23, 2012.**

### MEMBERSHIP

---

2.1 The following Members were appointed to the Joint Select Committee:

- |   |                       |
|---|-----------------------|
| ▪ Dr. Bhoendradatt Tewarie- <b>Chairman</b> | Mr. Collin Partap, MP |
| ▪ Dr. Tim Gopeesingh, MP                    | Mr. Colm Imbert, MP   |
| ▪ Mr. Prakash Ramadhar, MP                  | Mr. David Abdulah     |
| ▪ Mr. Herbert Volney, MP                    | Mr. Faris Al-Rawi     |
| ▪ Dr. Keith Rowley, MP                      | Mrs. Helen Drayton    |
| ▪ Mr. Anand Ramlogan, SC                    | Dr. James Armstrong   |

2.2 With the exception of, Mr. Kevin Ramnarine and Dr. Rolph Balgobin, the composition of the Committee remained the same as the one that was appointed in the First Session (2010/2011). These two Members were replaced by Dr. Bhoendradatt Tewarie and Dr. James Armstrong respectively.

## SECRETARIAL SUPPORT

---

3.1 The following persons provided secretarial assistance:

- Ms. Lily Broomes- Secretary
- Mr. Julien Ogilvie-Assistant Secretary
- Ms. Sheranne Samuel- Parliamentary Intern

## EXPERT ASSISTANCE

---

4.1 The following persons provided expert advice:

- Mrs. Claire Blake, S.C.- Senior Legal Consultant
- Ms. Anne Hussein- Legal Officer I

## ELECTION OF CHAIRMAN AND QUORUM

---

5.1 At its First Meeting held on December 02, 2011, the Committee unanimously appointed Dr. Bhoendradatt Tewarie as Chairman.

5.2 At that meeting, the Committee also resolved that its quorum will be as follows:

- ***Four(4) Members***  
*Comprising two (2) Members of the Government, one (1) Member of the Opposition and one (1) Independent Member.*

## MEETINGS

---

6.1 Since its appointment, your Committee held five (5) meetings on:

1. December 02, 2011;
2. January 06, 2012;
3. January 16, 2012.
4. April 17, 2012; and
5. May 28, 2012

## INTERIM REPORT

---

### Challenges with convening meetings- Lack of a quorum

7.1 Following its Third Meeting held on January 16, 2012, your Committee experienced challenges in convening meetings due to lack of a quorum. Its Fourth Meeting was postponed on two occasions (Monday January 30, 2012 and Wednesday February 29, 2012).

7.2 The initial quorum requirements stated at item 5.2 above proved to be impractical. The specification that certain groups must be represented within the quorum resulted in a situation where meetings could not be convened in the absence of any particular grouping. As a result, the work of the Committee was interrupted for approximately one month.

7.3 Given the imminent expiration of the time frame for the completion of its mandate, your Committee submitted an interim report seeking an extension of time and the intervention of Parliament to resolve the quorum issue. The Interim report was presented in the Senate on March 06, 2012 and in the House of Representatives on March 09, 2012.

### The issue of quorum resolved

7.4 However, at its Fourth meeting held on Tuesday April 17 2012, your Committee in accordance with the provisions of the standing orders<sup>1</sup> resolved, by a division of 5 to 2, to alter its quorum as follows<sup>2</sup>:

- **Any four Members of the Committee with at least one Member from the House of Representatives and one Member from the Senate, including the Chairman.**

## DELIBERATIONS

---

### GOVERNMENT'S POLICY POSITION ON PUBLIC PROCUREMENT

8.1 Initial discussions on the subject matter focused on the need for a policy position from the government with regard to the design for a national procurement system. It was agreed that this was essential in guiding your Committee in its deliberations and decision making.

8.2 Your Committee determined that the result of its deliberations ought to be a recommended framework on procurement that would inform the drafting of legislation

---

<sup>1</sup> Standing Orders 79(2) and 71(2) of the House of Representatives and the Senate respectively

<sup>2</sup> Refer to items 4.1 to 4.10 of the Minutes of the Fourth Meeting at Appendix III

## MAJOR ISSUES TO BE RESOLVED

---

9.1 Your Committee identified the following issues as critical for the advancement of its deliberations:

- (a) Whether a Procurement Regulator or an equivalent to a Contractor General is necessary for Trinidad and Tobago and reasons for this;
- (b) The role of the Minister and the Executive. The issue of parliamentary oversight;
- (c) The registration and application process for contractors;
- (d) The question of appeals and the allowance for due process while not hindering the business of production;
- (e) Balancing value for money, transparency and accountability against the need to facilitate development;
- (f) Being current not only with good practice, but with the latest thinking on good practice.

9.2 The policy proposals at **Appendix I** as agreed by your Committee addresses all of the issues that your Committee sought to resolve.

9.3 In seeking to determine what was the most suitable legislative solution to be adopted, your Committee examined the procurement systems of countries that have made notable advancements in this area such as Finland, Canada, United Kingdom, the Philippines, Latin America and Jamaica, among others.

## SUBMISSIONS RECEIVED BY THE COMMITTEE

10.1 In accordance with its mandate outlined at item 3.2, your Committee received written and oral submissions from organizations and persons as follows:

**Table 1.**

<b>No.</b>	<b>Person or organization</b>	<b>Nature of the submission (Oral or written)</b>	<b>Dated made or submitted</b>
i.	<b>Inter-American Development Bank</b>	<b>Written</b> Re: Program to support the Public Procurement Reform in Trinidad and Tobago	August 30, 2011
ii.	<b>Mr. Greg Christie, Contractor General of Jamaica</b>	<b>Oral and written submissions</b> Re: An overview of the operations of the Office of the Contractor General	January 16 2012 ( <i>Third meeting</i> )
iii.	<b>Ministry of Labour and Small and Micro-Enterprise Development</b>	<b>Written submission</b> Re: The incorporation of the tenets of the <i>FairShare programme</i> into the legislative framework for public procurement reform	March 21, 2012
iv.	<b>Chairman, Procurement Committee, Private Sector Civil Society Group</b>	<b>Written</b> Re: Revised Draft Public Procurement Bill dated April 11, 2011 and Revised Draft framework for procurement guidelines	April 16, 2012
v.	<b>Mr. Joao Veiga Malta, Senior Procurement Specialist from the World Bank</b>	<b>Oral and written submissions</b> Re: options for Public Procurement Reform for Trinidad and Tobago	April 17 2012 ( <i>Fourth Meeting</i> )
vi.	<b>Chairman of the Committee</b>	<b>Written</b> Re: Policy position for informing the Legislative Reform of Public Procurement and Disposal of Public Property by the Government of Trinidad and Tobago-	May 21, 2012 ( <i>Fifth Meeting</i> )

## CONSIDERATION OF PROPOSAL FOR ASSISTANCE FROM THE IDB

---

11.1 During the process of deliberation, your Committee was approached by representatives of the Inter-American Development Bank with an offer of technical assistance in the areas of public procurement reform. The Proposal sought to provide technical and financial Assistance to the Government of the Republic of Trinidad and Tobago in the sum of US\$300, 000.

11.2 Your Committee agreed to consult with the IDB to ascertain the feasibility of their offer of assistance and the possibility of execution, within a January 2012 timeframe. Discussions also ensued on the pre-legislation and post-legislation process. To date, the IDB agreed in principle that funding would be made available to support the implementation of the legislation, although a work plan between the Committee and the IDB had not been formulated.

## DISCUSSIONS WITH THE CONTRACTOR GENERAL OF JAMAICA

---

12.1 During its Second Meeting held on January 06, 2012, your Committee decided that it would be useful to hold discussions with the Contractor General of Jamaica to acquire a more in-depth insight into the operations of this office. The Office of the Contractor General is a similar office to the “Procurement Regulator” that was proposed to the Committee as a possible option. This Office has extensive powers and privileges to oversee the award and termination of public sector contracts.

12.2 To this end, Mr. Greg Christie, Contractor General of Jamaica was invited to Trinidad to meet with the Committee. Mr. Christie was accompanied by two other officials from his department, namely:

- **Mr. Craig Beresford**, Senior Director of Monitoring Operations, Corporate Communications & Special Projects; and
- **Ms. Sashein Wright**, Special Projects Assistant to the Contractor General, Communications Officer and Special Investigator.

12.3 At its Third Meeting, your Committee met with the Contractor General and engaged in in-depth discussion on the various aspects of his department’s operations. Due to the sensitive and confidential nature of the information that was anticipated to be shared, the Contractor General requested that discussions with the Committee be conducted in private. Thus, the Minutes of the Third Meeting held on January 16, 2012 at **Appendix III** do not reflect the full details of the discussions held between your Committee and the Contractor General.

12.4 This meeting proceeded as follows:

- A. The Contractor General made his presentation without any interjections by the Committee;
- B. Following his presentation, Members of the Committee posed questions and made comments;



C. The Committee then engaged the officials openly on issues of interest.

12.5 The following are the major subject areas and issues that were raised during the discussions:

- i. The jurisdiction of the Contractor General (CG) to oversee and scrutinize all contracts awarded and terminated by Government departments, agencies or bodies to ensure that contracts are awarded impartially and based on merit;
- ii. The wide and far reaching powers of investigation and inquiry vested in the Office of the Contractor General, including the ability to conduct investigations on current contracts and those awarded in the past;
- iii. The objectives of the CG's department as it relates to fostering transparency, impartiality and propriety in the public procurement system of Jamaica;
- iv. The high degree of independence and discretion granted to the CG;
- v. The different types and values of contracts over which the CG has jurisdiction;
- vi. The requirement for the CG to report the findings of investigations to the Executive and Parliament;
- vii. The requirement for strong political will to achieve Public Procurement reform.
- viii. Limitations and shortcomings of the Office of the Contractor General;
- ix. The existence of multiple anti-corruption bodies in Jamaica similar to Trinidad and Tobago (i.e. The Contractor General, the Integrity Commission and the Corruption Prevention Commission) and the need for them to be merged into a single Anti-corruption body.

12.6 Your Committee was very thankful for the knowledge, expertise and experience shared by the Contractor General and his team who traveled to Trinidad to meet with the Committee at short notice. Your Committee would have acquired invaluable insight into the operation of a 'regulator' in a Public Procurement Regime.

## **DISCUSSIONS WITH OFFICIALS FROM THE WORLD BANK**

---

13.1 By letter dated March 20, 2012, the World Bank requested of your Committee to have **Mr. Joao Veiga Malta, Senior Procurement Specialist from the World Bank** make an oral presentation to the Committee on the contents of the World Bank's procurement reform proposals for Trinidad and Tobago. The World Bank has assisted numerous countries in the area of Public Procurement Reform. As part of the Performance-Informed Budgeting and

Procurement Reform component under its Fee-Based Services, the World Bank prepared a guidance paper with options for procurement reform in Trinidad and Tobago.

13.2 Your Committee agreed to this request and met with Mr. Malta during its Fourth meeting. Your Committee heard Mr. Malta's presentation, following which a question and answer period ensued. **(See items 7.1 to 9.5 of the Minutes of the Fourth Meeting).**

## **CONSIDERATION OF GOVERNMENT'S POLICY POSITION FOR INFORMING THE LEGISLATIVE REFORM OF PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY**

---

14.1 In fulfillment of a commitment made to Members, the Chairman circulated, a document outlining government's policy position on procurement in advance of the Fifth Meeting of your Committee.

14.2 At the Fifth Meeting, your Committee considered the policy document **at Appendix II** provided by the Chairman. Your Committee considered the document page by page and made amendments where it deemed necessary. Amendments were made to allow for the inclusion of the following:

- i. **Adherence to national labour laws and standards;**
- ii. **The broadening of the mandate of the PAC to scrutinize the reports of the Procurement Regulator;**
- iii. **The requirement for the Procurement regulator to make recommendations to the Minister of Finance for action on any matter where issues of transparency, probity or good governance may be compromised. And that reports on such instances also be submitted for the consideration of the PAC;**
- iv. **Defined deadlines for the submission of reports to Parliament;**
- v. **A mechanism for expeditious treatment of objections to procurement decisions and/or dispute resolution be included in the legislation;**
- vi. **An approved list of adjudicators will be compiled to support the function of resolution of disputes;**

- vii. **A timeline of thirty (30) days for the resolution of disputes from the date of referral.**

14.3 Having recommended the foregoing for inclusion in the policy document to guide the reform of Public Procurement legislation in Trinidad and Tobago, your Committee unanimously agreed that:

1. The amended policy document at **Appendix I** should be included in the Committee's report to Parliament.
2. Your Committee's report would inform the drafting of legislation for the reform of the Public Procurement system of Trinidad and Tobago.

## **CONCLUSION**

---

15.1 The Joint Select Committee on Public Procurement was established on November 02, 2010. The work of this Committee has now spanned almost two sessions of Parliament. Over the period of work of this Committee, a fair range of proposals for consideration have been put forward by interested parties and stakeholders, both locally and abroad listed in Table 1. In addition, your Committee has reviewed a large volume of literature related to public procurement, including a number of models. The Uff Report on the Commission of Inquiry into the Construction Sector and its recommendations have been given due consideration.

15.2 The Legislative Proposals referred to the Committee in the First session (2010/2011) for its review and amendment were deemed to be mutually exclusive. The Committee at that time agreed that the two drafts required extensive and detailed redrafting to bring them in line with the requirements for a modern procurement system relevant to the culture of Trinidad and Tobago.

15.3 Following the reappointment of the Committee in the Second Session (2011/2012), the mandate of your Committee remained the same except that the work of the Committee established in the first session was brought forward. Nonetheless, the new Committee also agreed that the product of its deliberations ought to be a legislative framework of policy that would inform the drafting of legislation for the reform rather than a revised draft Bill or

prescriptive legislation. It was agreed that the policy framework emanating from the Committee must promote among other things:

- Transparency;
- Accountability;
- Fairness;
- Equity; and
- Value for money.

15.4 To this end, your Committee has reviewed and amended the Government's policy proposals to encapsulate the requirements/prerequisites listed at 15.3 above. Your Committee is satisfied that the policy proposals outlined in **Appendix I**, represent a relevant and appropriate guide/framework for the drafting of legislation for the reform of the Public Procurement Regime in Trinidad and Tobago.

## **RECOMMENDATIONS**

---

16.1 Given the foregoing, your Committee respectfully submits its final report and recommends that the report, together with **Appendix I and II** be used as a guide for the drafting of legislation and the implementation of policy initiatives for the reform of the public procurement system in Trinidad and Tobago;

Respectfully submitted,

Dr. Bhoendradatt Tewarie

**Chairman**

**June 04<sup>th</sup>, 2012**



## APPENDIX I

### Revised policy proposals for informing the Legislative Reform of Public Procurement and Disposal of Public Property including amendments made by the Committee on May 28, 2012 (in bold)

- i. That the procurement regime to be established must deliver goods and services more efficiently, effectively and at higher performance levels than currently exists. The system should take into account clear lines of accountability, ensure transparency and promote ethical conduct;
- ii. That Framework legislation rather than prescriptive legislation is recommended;
- iii. That such Framework legislation should come to Parliament together with general regulations, and the net of coverage of State institutions should be wide, in keeping with the policy pledge to ensure transparency and accountability by all government departments and state enterprises;
- iv. That a hybrid model involving a system with centralized as well as decentralized elements would be more practical and would be desirable;
- v. That this hybrid model should result in greater efficiency in public procurement by permitting Government Agencies to engage in their own procurement processes - that is within the context of law, rules and regulations - but still be subject to scrutiny through the oversight of the Procurement Regulator.
- vi. That transparency, accountability, **fairness, equity** and value for money be regarded as essential to enlightened policy and practice and must inform the legislation;
- vii. That efficiency, effectiveness, ethics and fair dealing should be an important outcome of the legislation;
- viii. That a new procurement regime should promote local industry, ensure that “local content” considerations are adequately addressed and that international trade is facilitated;
- ix. That the procurement regime also promote enlightened and progressive environmental practices, **adherence to national labour laws and standards**, provide opportunities for innovation and for human capital development and skills building;

- x. That the position of Regulator for Procurement and the Office of the Regulator for Procurement be established;
- xi. That the Office of the Regulator for Procurement be constituted as a statutory body, independent of any Ministry;
- xii. That to oversee the reporting of the Procurement Regulator to Parliament, the Public Accounts Committee be made to perform the oversight function, and that the Procurement Regulator be accountable to the Public Accounts Committee;
- xiii. Item (xii) above will require the institutionalization of an independent audit process. It will also require an expansion of the remit of the Public Accounts Committee which may also require a possible amendment to the law governing the Public Accounts Committee. These matters need to be taken into account in the drafting of the legislation;**
- xiv. That this Regulator be responsible for **establishing** centralized rules and regulations that will generally guide procurement matters at all levels, including e-procurement, within the context of Public Procurement Laws and Regulations;
- xv. That this Regulator be responsible for investigating complaints from any party involved in public procurement:
  - a. To ensure that the procurement process at all levels be above reproach at all times
  - b. To address complaints in an expeditious manner
  - c. To identify matters which may require investigation
  - d. To make recommendations **to the Minister of Finance** for action on any matter where issues of transparency, probity or good governance may be compromised;
  - e. That such matters as may relate to (c) and (d) above, also be submitted to the Public Accounts Committee**
- xvi. That this Regulator report to Parliament on an annual basis not later than ninety (90) days following the end of the reporting year and that the regulator submit special investigation reports within thirty (30) days of the initiation of an investigation to the Minister of Finance as well as to Parliament;**

- xvii. **that the Regulator should be appointed by the President following consultation with the Prime Minister and the Leader of the Opposition;**
- xviii. That the Procurement Regulator be able to select and appoint the staff of the Office of the Procurement Regulator on a merit basis;
- xix. That the Procurement Regulator be able to employ alternative dispute resolution and mediation, in the settling of complaints;
- xx. **That a mechanism for expeditious treatment of objections to procurement decisions and/or dispute resolution be established as part of the legislation. An approved list of adjudicators will be compiled to support the function of resolution of disputes. Adjudicators will be responsible for proposing a solution to disputes within 30 days from the date of referral.**

*Joint Select Committee  
Legislative Proposals on Public Procurement and  
on the Repealing and Replacing of the Central Tenders Board Act*

**Dated Monday May 28, 2012**



## APPENDIX II

### Policy position for informing the Legislative Reform of Public Procurement and Disposal of Public Property by the Government of Trinidad and Tobago- May 21, 2012

1. The current system of public procurement was established in 1961 under the Central Tenders Board Act, which established the Central Tenders Board (CTB) for the Government of Trinidad and Tobago and certain Statutory Bodies. The centralized procurement established in 1961 is still applicable to Government Ministries, departments and only a few statutory authorities, as through a series of amendments to the 1961 legislation, other agencies have been empowered to act independently of the CTB, these include:
  - The armed forces and the protective services which since 1991 are not required to revert to the CTB
  - NIPDEC which since 1993 as Agent of the State can conduct its own procurement

Additionally a 1987 amendment grants power to Government to undertake procurement during a period of emergency.

2. However, in all cases the regulatory framework which governs the CTB applies. In other words an overarching framework of rules governs all procurement but the CTB is not the Sole Agency authorized to award and execute contracts.
3. In 2005, the Investment Division of the Ministry of Finance produced a body of rules to guide State Enterprises/Statutory Authorities which include rules for appointment of tender committees, registration of contractors, the application and award process, appeals regarding unfair treatment and for the disposal of unserviceable items, so that State Enterprises not governed by the CTB are covered under these standard procurement procedure, and rules.
4. There have been previous attempts at Procurement Reform which were considered by Cabinet. The draft National Tenders Board Bill 1997 was considered by Cabinet but not introduced in Parliament. “The Reform of the Public Procurement Regime – A White Paper” produced by the Ministry of Finance was presented to Parliament in 2005 followed by the “Public Procurement and Disposal of Public Property Bill 2006” based on the White Paper. But the Bill was never debated.

5. The last amendment of the Central Tenders Board Act was done in 1993; so between 1993 and February 2012, although Cabinet has reviewed and considered the issue of procurement reform and has presented a White Paper as well as draft legislation to Parliament, Parliament itself sitting as House of Representatives and Senate have not considered or debated any amended or new procurement legislation since 1993.
6. In spite of all of this, procurement practices have often been suspect, and evidence within recent times has demonstrated possible instances of corruption and there have been calls as well as recommendations for Reform of the Procurement system. The 2010 People's Partnership Manifesto which formally and officially informs Government policy, makes the following commitment to Procurement Reform:

*“Our policy on infrastructure will be based on ensuring quality, reliability and maintenance of existing infrastructure while adopting transparent and fair procurement practices.”* (p. 61)

*“Prioritize the passing of procurement legislation and appropriate rules and regulations. Establish equitable arrangements for an efficient procurement system ensuring transparency and accountability by all government departments and state enterprises.”* (p. 18)

7. The Medium Term Policy Framework 2011-14 reinforces this position:

*“Priority will also be given to reforming the public procurement process and measures are to be undertaken to give effect to the recommendations contained in the White Paper on Reforming the Public Sector Procurement Regime”* (Page 18).

*“Government’s policy is to ensure that the quality, reliability and maintenance of existing infrastructure is of the highest standard, while adopting transparent and fair procurement practice”* (Page 74).

8. Over the period of the work of this Joint Select Committee meeting since 2010, a fair range of proposals for consideration have been put forward by interested parties and stakeholders including from the Joint Consultative Council, Chambers of Commerce and Environmental organisations. The World Bank has also made a presentation to the Committee. In addition, a number of models have been examined and the Uff Report and its recommendations have been given due consideration.
9. Since 2010, the Government of Trinidad and Tobago has made a clear commitment to reform the system but has not so far articulated a clear policy. The approach so far has been to wait on the completed report of the Joint Select Committee so that Cabinet could review the Committee’s work, as a consensus position which would then inform the legislative drafting stage. At this point, given the recent unfolding of events with regard to the functioning of the Joint Select Committee it is doubtful whether the level of cooperation required to achieve a consensus policy position from the Committee can be

achieved. Accordingly, the Government of Trinidad and Tobago considers it prudent to present its policy position formally to the Committee.

10. In outlining its policy position the Government of Trinidad and Tobago has taken into account features identified in the relevant literature to support a good and modern public procurement system appropriate to a country such as ours. These include:

(i) Demand Identification- which takes into account that we need in Trinidad and Tobago a platform of government spending which would address:

- a. Government agencies now subject to the Central Tenders Board as well as State Enterprises and State Agencies which may not now be so subject;
- b. The achievement of best value for each unit of government spending.

(ii) Needs Based Assessment- in the case of Trinidad and Tobago refers to the collective assessment of what might have gone wrong in the current system and what needs to be done differently to improve the system and facilitate enlightened practice.

(iii) Best Identifiable Remedy- which in the case of Trinidad and Tobago would mean a universal system encompassing all arms of government. Such a system will allow for:

- a. Government savings, while spending in procuring goods at good value;
- b. the use of government special purpose companies as an incubator for sound principles in contracting;
- c. the use of government spending to grow skills in local industry;
- d. the use of government spending to encourage small business, green practices and innovation;
- e. the use of government spending presented to the public in a clear easily identifiable manner;
- f. good quantification (accounting) of government spending;
- g. easy identification of goods for the short and long term value and their position within government strategy;
- h. an identifiable link between government macroeconomic strategy, macroeconomic spending and microeconomic initiatives.

(iv) Implementation of the Best Identifiable Remedy- which will require adherence to the following principles:

- a. best value for money;
- b. open and effective competition;
- c. transparency;

d. enhancing opportunities for local businesses within the framework of (iii) identified above.

(v) A Monitoring and Evaluation System- which will allow for independent scrutiny of the execution of policy in matters related to procurement.

(vi) Ensuring that objections in procurement matters are expeditiously handled-this will allow a distinction to be made between genuine well substantiated objections and frivolous and obstructionist ones. The idea is that government strategy for progress and development should not be undermined by irresponsible actions but that legitimate objections grounded in evidence will be taken into account.

11. Against this background the following recommendations are made by the Government of Trinidad and Tobago for the establishment of a modern procurement system:

- i. That the procurement regime to be established must deliver goods and services more efficiently, effectively and at higher performance levels than currently exists. The system should take into account clear lines of accountability, ensure transparency and promote ethical conduct;
- ii. That Framework legislation rather than prescriptive legislation is recommended;
- iii. That such Framework legislation should come to Parliament together with general regulations, and the net of coverage of State institutions should be wide, in keeping with the policy pledge to ensure transparency and accountability by all government departments and state enterprises;
- iv. That a hybrid model involving a system with centralized as well as decentralized elements would be more practical and would be desirable;
- v. That this hybrid model should result in greater efficiency in public procurement by permitting Government Agencies to engage in their own procurement processes - that is within the context of law, rules and regulations - but still be subject to scrutiny through the oversight of the Procurement Regulator.
- vi. That transparency, accountability and value for money be regarded as essential to enlightened policy and practice and must inform the legislation;
- vii. That efficiency, effectiveness, ethics and fair dealing should be an important outcome of the legislation;
- viii. That a new procurement regime should promote local industry, ensure that “local content” considerations are adequately addressed and that international trade is facilitated;

- ix. That the procurement regime also promote enlightened and progressive environmental practices and provide opportunities for innovation and for human capital development and skills building;
- x. That the position of Regulator for Procurement and the Office of the Regulator for Procurement be established;
- xi. That the Office of the Regulator for Procurement be constituted as a statutory body, independent of any Ministry;
- xii. That this Regulator report to Parliament on an annual basis;
- xiii. That to oversee the reporting of the Procurement Regulator to Parliament, the Public Accounts Committee be made to perform the oversight function, and that the Procurement Regulator be accountable to the Public Accounts Committee;
- xiv. That this Regulator be responsible for establishing centralized rules and regulations that will generally guide procurement matters at all levels, including e-procurement, within the context of Public Procurement Laws and Regulations;
- xv. That this Regulator be responsible for investigating and resolving complaints from any party involved in public procurement:
  - a. To ensure that the procurement process at all levels be above reproach at all times
  - b. To address complaints in an expeditious manner
  - c. To identify matters which may require investigation
  - d. To make recommendations for action on any matter where issues of transparency, probity or good governance may be compromised to the Minister of Finance
- xvi. That the Procurement Regulator be appointed by the President
- xvii. That the Procurement Regulator be able to select and appoint the staff of the Office of the Procurement Regulator on a merit basis;
- xviii. That the Procurement Regulator be able to employ alternative dispute resolution and mediation, in the settling of complaints;
- xix. That a mechanism for expeditious treatment of objections to procurement decisions and/or dispute resolution be established as part of the legislation.

The Government's policy position on procurement, in keeping with its commitment in the Manifesto of 2010 and the Medium-Term Policy Framework of 2011 is hereby made available for scrutiny, comment and engagement.

**Senator, Dr. the Honourable Bhoendradatt Tewarie**  
**Chairman, Joint Select Committee-**  
**Legislative Proposals on Public Procurement and**  
**on the Repealing and Replacing of the Central Tenders Board Act**

**Date May 21, 2012**

## APPENDIX III

# MINUTES OF THE PROCEEDINGS OF MEETINGS

**MINUTES OF THE FIRST MEETING OF THE JOINT SELECT COMMITTEE  
ESTABLISHED TO CONSIDER AND REPORT ON  
THE LEGISLATIVE PROPOSALS FOR PUBLIC PROCUREMENT AND DISPOSAL OF  
PUBLIC PROPERTY AND THE REPEAL AND REPLACEMENT OF THE CENTRAL  
TENDERS BOARD ACT  
HELD IN LEVEL 2 MEETING ROOM, OFFICE OF THE PARLIAMENT, TOWER D,  
THE PORT OF SPAIN INTERNATIONAL WATERFRONT CENTRE,  
1A WRIGHTSON ROAD, PORT OF SPAIN  
ON FRIDAY DECEMBER 2, 2011 AT 11:18 A.M.**

**PRESENT**

Hon. Wade Mark, MP	Speaker of the House
Dr. Tim Gopeesingh, MP	Member
Mr. Herbert Volney, MP	Member
Mr. Collin Partap, MP	Member
Dr. Keith Rowley, MP	Member
Mr. Anand Ramlogan	Member
Dr. Bhoendradatt Tewarie	Member
Mr. David Abdulah	Member
Mrs. Helen Drayton	Member
Dr. James Armstrong	Member

**ABSENT**

Mr. Colm Imbert, MP	Member (Excused)
Mr. Prakash Ramadhar, MP	Member (Excused)
Mr. Faris Al-Rawi	Member (Excused)

**SECRETARIAT**

Mrs. Lily Broomes	Secretary
Ms. Candice Williams	Graduate Research Assistant

**INTRODUCTION**

1.1 The Speaker of the House called the meeting to order at 11.18 a.m. and welcomed Members present. He explained that his role at the meeting was to facilitate the election of a Chairman.



## **ELECTION OF CHAIRMAN**

- 2.1 The Speaker invited nominations for the post of Chairman.
- 2.2 Dr. Bhoendradatt Tewarie was nominated by Dr. Tim Gopeesingh. This was seconded by  
Mr. Anand Ramlogan.
- 2.3 The Speaker inquired whether there were any other nominations. There being no other nominations, Dr. Bhoendradatt Tewarie was declared the duly elected Chairman of the Committee.
- 2.4 The Speaker of the House congratulated the Chairman and wished the entire Committee success in its deliberations. He further emphasized the importance of the Committee and its undertaking and expressed the hope that its business would be managed effectively.
- 2.5 The Speaker then invited Dr. Tewarie to take the chair and excused himself from the Meeting.

## **DETERMINATION OF QUORUM**

- 3.1 The Chairman invited suggestions for a quorum.
- 3.2 After some discussion, the Committee agreed to the composition of the quorum as follows:
  - ***Four(4) Members , comprising two (2) Members of the Government, one (1) Member of the Opposition and one (1) Independent Member.***

## **APOLOGIES**

4.1 The Chairman extended apologies on behalf of the following members who indicated their inability to attend the meeting:-

- Mr. Prakash Ramadhar;
- Mr. Colm Imbert; and
- Mr. Faris Al-Rawi.

## **SECRETARIAL SUPPORT**

- 5.1 The Chairman informed Members that in accordance with Standing Order 6(7), Mrs. Lily Broomes has been assigned as Secretary to the Committee with Mr. Julien Ogilvie as Assistant Secretary.

- 5.2 The Chairman thanked the Committee and the former chairman for the significant work that was completed.
- 5.3 The Chairman requested the cooperation of the Leader of the Opposition and the Independent Members in assisting the Committee to fulfill its mandate with integrity, excellence and in an expeditious manner.

### **MANDATE**

- 6.1 The Chairman reiterated the Committee's mandate and also sought clarification on item (C) of the mandate "Send for papers, records and other documents" to which the Secretary gave an explanation.
- 6.2 The Committee ascertained that the deadline for reporting to Parliament was **February 23, 2012**.
- 6.3 Much discussion ensued on whether there was need to have a policy position from the government to guide the way forward for the Committee. Issues of decentralized or hybrid models, regulatory framework and adjudication formed part of the discussion. The Committee would continue its work and hope to arrive at a consensus position.
- 6.4 The Chairman indicated that in the interest of transparency, Members needed to have a discussion on the issue of "**declaration of interest**" considering the fact that we are a small society with unknown connections.
- 6.5 The Committee agreed that it would be useful to hold discussions with the Contractor General of Jamaica and in this regard, it was also agreed to invite the Contractor General to meet with the Committee to share their experience.

### **Requested information**

- 7.1 The Secretary was directed to provide the Committee with the following:
- i. Completed legislation on public procurement recently passed in Finland;**
  - ii. Documentation on E- procurement systems and how they work;**
  - iii. Examples of small societies where procurement legislation and E-procurement systems are in use in addition to countries such as the United States and Canada.**

### **Inter-American Development Bank (IDB) Offer**

8.1 The Committee was informed that an offer of assistance from the Inter-American Development Bank (IDB) will be placed on the Agenda for discussion at the next meeting. The IDB offer is to be circulated to Members in advance of the next meeting.

### **NEXT MEETING**

9.1 After some discussion, the Committee established that meetings will be held every Friday at 11.00 a.m. but the next meeting will however be held on **Monday December 12, 2011 at 1.30 p.m.**

### **ADJOURNMENT**

10.1 The Chairman thanked Members for their participation. The meeting was adjourned to **Monday December 12, 2011 at 1.30 p.m.**

10.2 The adjournment was taken at 12.03 p.m.

**I certify that the Minutes are true and correct.**

Dr. Bhoendradatt Tewarie  
**Chairman**

Mrs. Lily Broomes  
**Secretary**

**December 05, 2011**

**MINUTES OF THE SECOND MEETING OF THE JOINT SELECT COMMITTEE  
ESTABLISHED TO CONSIDER AND REPORT ON  
THE LEGISLATIVE PROPOSALS FOR PUBLIC PROCUREMENT AND DISPOSAL OF  
PUBLIC PROPERTY AND THE REPEAL AND REPLACEMENT OF THE CENTRAL  
TENDERS BOARD ACT  
HELD IN THE ARNOLD THOMASOS ROOM (WEST), LEVEL 6, OFFICE OF THE  
PARLIAMENT, TOWER D, THE PORT OF SPAIN, IWFC,  
1A WRIGHTSON ROAD, PORT OF SPAIN  
ON FRIDAY JANUARY 06, 2012 AT 10:20 A.M.**

**PRESENT**

**COMMITTEE MEMBERS**

Dr. Bhoendradatt Tewarie	Chairman
Dr. Tim Gopeesingh, MP	Member
Mr. Prakash Ramadhar, MP	Member
Mr. Colm Imbert, MP	Member
Mr. Anand Ramlogan, SC	Member
Mr. David Abdulah	Member
Mrs. Helen Drayton	Member
Dr. James Armstrong	Member

**ABSENT**

Mr. Herbert Volney, MP	Member (Excused)
Mr. Collin Partap, MP	Member (Excused)
Dr. Keith Rowley, MP	Member (Excused)
Mr. Faris Al-Rawi	Member (Excused)

**SECRETARIAT**

Mrs. Lily Broomes	Secretary
Mr. Julien Ogilvie	Assistant Secretary
Ms. Sheranne Samuel	Parliamentary Intern

**MINISTRY OF THE ATTORNEY GENERAL**

Ms. Claire Blake, SC	Senior Legal Consultant
Ms. Joan Furlonge	Legal Adviser to the Honourable Attorney General
Ms. Anne Hussein	Legal Officer

## **INTRODUCTION**

1.1 The Chairman called the meeting to order at 10.20a.m, welcomed Members and extended New Year greetings.

1.2 The Chairman invited the officers from the Office of the Attorney General, the Parliament Secretariat and Hansard Unit to introduce themselves to the Committee.

1.3 The Chairman informed members that the following persons indicated their inability to attend the meeting:

- Mr. Herbert Volney, MP
- Mr. Collin Partap, MP
- Dr. Keith Rowley, MP
- Mr. Faris Al-Rawi

## **Consideration of Minutes of the First Meeting**

2.1 The Chairman directed the attention of Members to the Minutes of the First meeting held on December 02, 2012 and inquired whether Members wished to highlight any errors or omissions.

2.2 Dr. Armstrong objected to the wording of item 6.3 and thought it did not sufficiently represent the course of discussions that transpired. He referred to pages 15 and 16 of the verbatim notes from the First meeting and proposed that the item be appropriately reworded.

2.3 Lengthy decision ensued with various members articulating their position on the matter

2.4 In the end, the committee agreed that the item should be amended by inserting the following:

**“...Members expressed the hope that the consensus position arrived at by the committee would be favourably considered by the government in the adoption of its policy”**

2.5 The motion for the confirmation of the minutes was moved by Dr. Gopeesingh and was seconded by Mr. Abdulah.

## **MATTERS ARISING OUT OF THE MINUTES**

3.1 Mr. Imbert reverted to the discussions on item 6.3 and reiterated that a Parliamentary Committee cannot dictate or bind the actions of Cabinet or the Executive.

## **CONSIDERATION OF PROPOSAL FOR ASSISTANCE FROM THE IDB**

4.1 The Chairman referred members to a letter dated August 30, 2011 from the Inter-American Development Bank (IDB) offering financial and technical assistance to the Government of the Republic of Trinidad and Tobago in the area of Public Procurement Reform.

4.2 The assistance will come in two phases: pre-legislation and post-legislation.

4.3 The Committee decided that they would consult with the IDB to determine whether their offer of assistance can be carried out expeditiously i.e. within a January 2012 timeframe and also to discuss the pre-legislation and post-legislation process.

## **CONSIDERATION OF REQUESTED RESEARCH INFORMATION**

5.1 Mrs. Blake emphasized the need for the Committee to decide on the model of legislation, be it the prescriptive model or the framework model. There was consensus among Members that the Committee will go the way of framework legislation.

5.2 Mrs. Drayton reiterated the importance of regulations and stated that it would be inappropriate to table a piece of legislation without the regulations.

5.3 Debate ensued on whether the proposed legislation will deal solely with central government or whether it will govern state enterprises as well.

5.4 There was a general consensus that there should be rules and regulations to govern state enterprises and special purpose companies. It was felt that a hybrid model will address this.

5.5 Mr. Imbert stated that standard tender rules should be legislated and questioned the need for a regulator.

5.6 Members expressed an appreciation for the Finnish model.

## **OTHER BUSINESS**

6.1 Dr. Gopeesingh suggested that the Committee examine the Draft Public Procurement and Disposal of Public Property Bill, 2011 prepared by the Ms. Blake and a legal team from the Joint Consultative Council for the Construction Industry (JCC). Mr. Imbert reminded members that the Committee agreed to come up with a legislative framework and not a Bill.

6.2 Mrs. Drayton suggested having a two (2) day workshop to deal with matters of the Committee. Members acknowledged that this may be feasible after the Committee meets with the Contractor General of Jamaica.

6.3 The Committee decided that they will meet with the Contractor General at their next meeting on Monday January 16, 2012, the timeframe of which will be extended to facilitate this.

### **NEXT MEETING**

7.1 After some discussion, the Committee established that the next meeting will be held on **Monday January 16, 2012 at 10.00 a.m.**

### **ADJOURNMENT**

8.1 The Chairman thanked Members for their participation. The meeting was adjourned to **Monday January 16, 2012 at 10.00 a.m.**

8.2 The adjournment was taken at 11.57 a.m.

**I certify that the Minutes are true and correct.**

Dr. Bhoendradatt Tewarie  
**Chairman**

Mrs. Lily Broomes  
**Secretary**

**January 11, 2012**

**MINUTES OF THE THIRD MEETING OF THE JOINT SELECT COMMITTEE  
ESTABLISHED TO CONSIDER AND REPORT ON  
THE LEGISLATIVE PROPOSALS FOR PUBLIC PROCUREMENT AND DISPOSAL OF  
PUBLIC PROPERTY AND THE REPEAL AND REPLACEMENT OF THE CENTRAL  
TENDERS BOARD ACT  
HELD IN THE ARNOLD THOMASOS ROOM (WEST), LEVEL 6, OFFICE OF THE  
PARLIAMENT, TOWER D, THE PORT OF SPAIN, IWFC,  
1A WRIGHTSON ROAD, PORT OF SPAIN  
ON MONDAY JANUARY 16, 2012 AT 10:00 A.M.**

**PRESENT**

**COMMITTEE MEMBERS**

Dr. Bhoendradatt Tewarie	Chairman
Dr. Tim Gopeesingh, MP	Member
Mr. Prakash Ramadhar, MP	Member
Mr. Herbert Volney, MP	Member
Mr. Collin Partap, MP	Member
Dr. Keith Rowley, MP	Member
Mr. Colm Imbert, MP	Member
Mr. Anand Ramlogan, SC	Member
Mr. David Abdulah	Member
Mr. Faris Al-Rawi	Member
Mrs. Helen Drayton	Member
Dr. James Armstrong	Member

**SECRETARIAT**

Mrs. Jacqui Sampson- Meiguel	Clerk of the House
Mrs. Lily Broomes	Secretary
Mr. Julien Ogilvie	Assistant Secretary
Ms. Sheranne Samuel	Parliamentary Intern

**MINISTRY OF THE ATTORNEY GENERAL**

Ms. Claire Blake, SC	Senior Legal Consultant
Ms. Joan Furlonge	Legal Adviser to the Honourable Attorney General
Ms. Anne Hussein	Legal Officer I



## **OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA**

Mr. Greg Christie	Contractor General of Jamaica
Mr. Craig Beresford	Senior Director of Monitoring Operations, Corporate Communications & Special Projects
Ms. Sashein Wright	The Special Projects Assistant to the Contractor General, Communications Officer and Special Investigator.

### **INTRODUCTION**

1.1 The Chairman called the meeting to order at 10.04 a.m. He suggested that the meeting proceed since the Members in attendance constituted a quorum and other members will join as the morning progressed.

#### **Consideration of Minutes of the Second Meeting**

2.1 The Chairman directed the attention of Members to the Minutes of the Second meeting held on December 02, 2012. The Committee examined the minutes page by page and found no errors or omissions.

2.2 The Chairman therefore requested that a member move the adoption of the Minutes.

2.3 Mrs. Drayton moved and Senator Abdulah seconded.

### **MATTERS ARISING OUT OF THE MINUTES**

#### **Inter-American Development Bank (IDB)**

3.1 Mr. Abdulah inquired whether any feedback from the IDB was received.

3.2 In response, the Chairman advised the Committee that he consulted with the IDB and they agreed in principle that most of the funding would be made available to support the implementation of the legislation.

3.3 In addition, the Chairman indicated that the IDB was willing to provide a technical expert to assist in the preparation of Committee documents for submission to Parliament. He further advised that the funding available for the implementation of the legislation was free and did not have to be repaid.

3.4 Mr. Al-Rawi sought clarification on a concern expressed in the minutes with regards to the timeliness of the assistance from the IDB. The Chairman indicated that the Committee will proceed with its business with or without the input of the IDB.

### **Frame work or prescriptive legislation**

3.5 Mr. Al-Rawi also queried whether at the last meeting, the Committee determined the type of legislative solution its deliberations will aim to produce, that is, a draft Bill or framework legislation etc.

3.6 The Chairman indicated that at the last meeting, the Committee did not agree on the preparation of a draft Bill, rather there was agreement that the Committee's report must contain a solid policy position and a recommended course of action in the form of a Legislative Framework, which will adopt elements of a Hybrid Model.

3.7 The Chairman held that if each member would examine the Public Procurement Bill dated April 09, 2011, which was revised by the Joint Consultative Council for the Construction Industry (JCC) in collaboration with Ms. Claire Blake, SC, the Committee will be in a better position.

### **CONSIDERATION OF APPROACH FOR DISCUSSION WITH THE CONTRACTOR GENERAL**

4.1 The Chairman advised members that the Contractor General and two of his support officers were available and waiting to meet with the Committee. He further advised that the Contractor General had forwarded some documents for the consideration of the Committee in advance of the meeting.

4.2 The Chairman reiterated the approach for the meeting that was discussed on the last occasion the Committee met, which he mentioned as follows:

- A. The Contractor General will make his presentation without any interjections by the Committee;
- B. Following his presentation, members of the Committee may ask questions and make comments;
- C. The Committee would engage the officials openly on issues of interest.

4.3 Members proffered the following suggestions:

- i. Inquire about the models Jamaica would have examined to arrive at their existing Public Procurement arrangements. Also state the shortcomings of the current legislation;

- ii. The extent to which litigation has impacted the operations of the Office of the Contractor General, in terms of delays, particularly with regards to implementation;
- iii. Whether Jamaica has conducted a review or assessment of its existing procurement legislation and if so, what models were considered;
- iv. Inquire about the operations of the National Contracts Commission (NCC);
- v. Engage on the question of E-procurement;
- vi. Clarification needed on Sector Committees;
- vii. Ascertain whether there are opportunities for abuse of power within the system;
- viii. Clarification needed on the relationship between the Contractor General, the National Contracts Commission and subsector bodies.

4.4 Mr. Imbert drew Members' attention to the Public Sector Procurement Policy of Jamaica (Item 35.1), included in the documents supplied by the Office of the Contractor General of Jamaica:

*"It is issued under the authority of the Minister of Finance pursuant to Section 19 B of the Financial Administration and Audit Act and the National Contracts Commission in accordance with the Contractor-General Act 1993".*

4.5 He requested a copy of the Financial Administration and Audit Act of Jamaica to which the item refers. He also suggested that the Committee adopts the measure whereby tender rules become legally binding by order of the Minister of Finance.

## **CONSIDERATION OF MATTERS TO BE DISCUSSED AT THE NEXT MEETING**

5.1 The Chairman asked that members avail themselves of the following documents:

- i. Draft Public Procurement and Disposal of Public Property Bill, 2011 (dated April 09, 2011) revised by the JCC and Ms. Claire Blake, SC;
- ii. Legislative Framework on Public Procurement (Inclusive of Explanatory Notes);
- iii. Auditor General's comments on the Legislative Proposals;
- iv. Reservations/ concerns expressed by the last Committee (to be forwarded by Mrs. Blake);
- v. World Bank Proposals – (Chairman indicated that he will make these available).

5.2 Some concern was raised about the reservations of the last Committee in relation to the Procurement and Disposal of Public Property Bill, 2006. Mrs. Blake indicated that they were not recorded in the framework and that she would like to do so in order to produce a revised document. The Chairman requested that the reservations be detailed separately from the existing Legislative Framework.

5.3 The Chairman highlighted the following issues to be considered:

- (a) Whether a regulator or an equivalent to a Contractor General is necessary or not in the case of Trinidad and Tobago and reasons for this;
- (b) The role of the Minister and the Executive. The issue of parliamentary oversight;
- (c) The registration and application process for contractors;
- (d) The question of appeals and the allowance for due process while not hindering the business of production;

5.4 Mrs. Drayton raised the issue of the National Procurement Advisory Council.

5.5 Both Mr. Al-Rawi and Mr. Gopeesingh raised the point of a need for an independent anti-corruption state agency which was an issue coming out of the media releases of the Contractor General of Jamaica. It was noted that the proposed procurement legislation would have implications for this.

## **REPORT TO PARLIAMENT**

6.1 The Chairman suggested that the reality of the procurement process in Trinidad and Tobago as it stands today and the changing global realities and benchmarks that demand an enlightened procurement process be included in the Committee's Report to Parliament.

## **SUSPENSION**

7.1 The Meeting was suspended at 11:22 a.m.

## **MEETING WITH OFFICIALS FROM THE OFFICE OF THE CONTRACTOR GENERAL OF JAMAICA**

### ***Proceedings Off the record***

*Further to a request from the Contractor General of Jamaica there was no Audio Recording or Hansard reporting during the period of discussions with the Committee*

## **Discussions following meeting with the Contractor General**

8.1 Following the discussions with the Contractor General Members engaged each other on the way forward.

8.2 It was suggested that the next course of action for the Committee is to take a serious and detailed look at the legislative models available and determine what elements of those models should be incorporated in our legislative solution.

8.3 The Chairman suggested that for the committee to achieve meaningful progress each and every member must conduct a detailed examination of the following documents:

- a. Revised Legislative Framework (inclusive of explanatory Note) on Public Procurement prepared by Ms. Claire Blake, SC, Legal Consultant;
- b. Revised Draft Public Procurement and Disposal of Public Property Bill, 2011 (dated April 09, 2011) amended by the JCC and Ms. Claire Blake, SC;
- c. The Auditor General's comments on the Legislative Proposals;
- d. World Bank Proposals (*Chairman indicated that he will make these available*)

#### **NEXT MEETING**

9.1 After some discussion, the Committee established that the next meeting will be held on **Monday January 30, 2012 at 9.00 a.m.**

#### **ADJOURNMENT**

10.1 The Chairman thanked Members for their participation. The meeting was adjourned to **Monday January 30, 2012 at 9.00 a.m.**

10.2 The adjournment was taken at 3: 33 p.m.

**I certify that the Minutes are true and correct.**

Dr. Bhoendradatt Tewarie  
**Chairman**

Mrs. Lily Broomes  
**Secretary**

**January 23, 2012**

**MINUTES OF THE FOURTH MEETING OF THE JOINT SELECT COMMITTEE  
ESTABLISHED TO CONSIDER AND REPORT ON  
THE LEGISLATIVE PROPOSALS FOR PUBLIC PROCUREMENT AND DISPOSAL OF  
PUBLIC PROPERTY AND THE REPEAL AND REPLACEMENT OF THE CENTRAL  
TENDERS BOARD ACT  
HELD IN THE ARNOLD THOMASOS ROOM (WEST), LEVEL6, OFFICE OF THE  
PARLIAMENT, TOWER D, THE PORT OF SPAIN, IWFC,  
1A WRIGHTSON ROAD, PORT OF SPAIN  
  
ON TUESDAY APRIL 17, 2012 AT 9:20 A.M.**

**PRESENT**

**COMMITTEE MEMBERS**

Dr. Bhoendradatt Tewarie	Chairman
Dr. Tim Gopeesingh, MP	Member
Mr. Herbert Volney, MP	Member
Mr. Collin Partap, MP	Member
Dr. Keith Rowley, MP	Member
Mr. Colm Imbert, MP	Member
Mr. David Abdulah	Member
Mr. Faris Al-Rawi	Member
Mrs. Helen Drayton	Member
Dr. James Armstrong	Member

**ABSENT**

Mr. Anand Ramlogan, SC	Member
Mr. Prakash Ramadhar, MP	Member

**SECRETARIAT**

Mrs. Lily Broomes	Secretary
Mr. Julien Ogilvie	Assistant Secretary
Ms. Sheranne Samuel	Parliamentary Intern

**MINISTRY OF THE ATTORNEY GENERAL**

Ms. Claire Blake, SC	Senior Legal Consultant
Ms. Anne Hussein	Legal Officer I

## **OBSERVERS**

Mr. Michael Mendez

Deputy Permanent Secretary  
Ministry of Finance

Ms. Joan Furlonge

Legal Adviser to the Honourable Attorney  
General

## **THE WORLD BANK**

Mr. Joao Veiga Malta

Senior Procurement Specialist

Ms. Fanny Weiner

Public Sector Group, Latin America and  
the Caribbean Region

## **INTRODUCTION**

1.1 The Chairman called the meeting to order at 9:20 a.m. and thanked those present for their attendance.

### **Consideration of Minutes of the Third Meeting**

2.1 The Chairman directed the attention of Members to the Minutes of the Third meeting held on January 16, 2012. The Committee examined the minutes page by page and found no errors or omissions.

2.2 The Chairman therefore requested that a member move the confirmation of the Minutes.

2.3 Mr. Abdulah moved and Mr. Partap seconded.

## **MATTERS ARISING OUT OF THE MINUTES**

3.1 No matters were raised.

## **REVISITING THE QUORUM**

4.1 The Chairman directed members' attention to the issue of revising the quorum of the Committee. He referred members to the Standing Order that gave a Joint Select Committee the discretion to determine its quorum.

4.2 The Chairman proposed that the quorum be as follows:

- Any four (4) members of the Committee with at least one member from the House and one Member from the Senate.

4.3 The proposal was seconded by Mr. Partap.

4.4 Mr. Imbert stated his objection to the Chairman's proposal. He contended that the perception he had was that the Committee would seek to arrive at consensus based on its deliberations. He also expressed concern about the tendency for meetings to be convened early in the morning, which he held would inconvenience members who serve on a part-time basis.

4.5 In response, the Chairman reiterated that the rationale for instituting the new requirements for a quorum is to prevent the work of the committee from being stymied by the non-participation of a particular sector of members. He committed to ensure that subsequent meetings are scheduled for dates that are convenient to opposition and independent members.

4.6 Mrs. Drayton inquired of the Chairman, whether the traditional composition of the a Joint Select Committee will remain, that is, a committee with representation from the Government, Opposition and Independent bench.

4.7 The Chairman explained that the initial approach that would have been adopted to resolve the quorum issue was to have the Interim Report of the Committee debated. However, he advised that the debate was preempted when the opposition gave a commitment to continue participating in the committee.

4.8 Mr. Al-Rawi concurred with the observations made by Mr. Imbert.

4.9 At the end of the discussions, the Chairman again proposed that the quorum of the Committee be constituted as follows:

- **Any four members of the Committee with at least one member from the House of Representatives and one Member from the Senate, including the Chairman.**

4.10 The Members present voted as follows:-

- i. five of the seven Members present (excluding the Chairman) voted in favour of the motion: Mr. Volney, Mr. Partap, Mr. Abdulah, Mrs. Drayton and Dr. Armstrong;
- ii. two of the seven Members present (Excluding the Chairman) voted against: Mr. Imbert and Mr. Al-Rawi.



4.11 In light of the results of the vote, the quorum of the Committee was duly amended as stated at 4.8 above.

#### **ABSENT/EXCUSED**

5.1 The Chairman advised that Mr. Anand Ramlogan, SC and Mr. Prakash Ramadhar, were both out of the country and were excused from the meeting.

#### **PRELIMINARY DISCUSSIONS ON PRESENTATION FROM THE WORLD BANK**

6.1 The Chairman advised Members that the World Bank had requested a meeting with the Committee to present its position on a modern procurement system. He indicated that as Chairman he believed that in the spirit of openness, the committee should accede to the World Bank's request.

6.2 The Chairman indicated that the officials from the World Bank had agreed to make a 20 minute presentation to be followed by a 30 minute question and answer period.

6.3 Mr. Al-Rawi sought to ascertain the genesis of the input or assistance from the World Bank and also sought clarification about the meaning of '*Fee-based services*.'

6.4 In response, the Chairman indicated as follows:

- i. the Ministry of Finance and to a lesser extent, the Ministry of Planning and the Economy have engaged the IDB and the World Bank. The Minister of Finance wrote to the Chairman of the Committee advising that the World Bank was desirous of meeting with the 'Procurement Committee' to share the organisation's views on modern best practice in procurement and on matters leading up to procurement legislation;
- ii. It may be possible to acquire the assistance of the World Bank in drafting procurement legislation. However, the Government has already committed to the IDB's offer of a US\$300, 000 assistance grant;
- iii. The IDB's assistance will be used mainly during the implementation and operationalization of the provisions of the new procurement legislation;

6.5 Mr. Imbert and Mrs. Drayton expressed their dissatisfaction with the contents of the draft submission from the World Bank (circulated prior to the meeting).

6.6 In response, the Chairman suggested that the Committee proceed to meet with the World Bank officials and members can state their positions then.

## MEETING WITH OFFICIALS FROM THE WORLD BANK

*[Officials from the World Bank enter the meeting room]*

### Introductory remarks

7.1 The Chairman welcomed **Mr. Joao Veiga Malta, Senior Procurement Specialist and Ms. Fanny Weiner, Public Sector Group, Latin America and the Caribbean Region** and thank them for attending.

7.2 The Chairman also took the opportunity to indicate that Mr. Michael Mendez, Deputy Permanent Secretary in the Ministry of Finance and Ms. Joan Furlonge, Legal Adviser to the Honourable Attorney General, were present as observers.

### Presentation by Mr. Joao Veiga Malta, Senior Procurement Specialist, World Bank

8.1 Before the commencement of his presentation Mr. Malta expressed appreciation to the committee for acceding to the World Bank's request to meet with the Committee.

8.2 **See attached as Appendix I**, the Presentation of Mr. Joao Veiga Malta, Senior Procurement Specialist, World Bank.

### QUESTION AND ANSWER PERIOD

9.1 The following is a synopsis of the questions posed by members and the responses provided by Mr. Malta:

**a. How can the Trinidadian Model be improved in the short to medium term vis-à-vis framework arrangements or complex transactions with Government?**

- A detailed plan for reforming the system has to be created.
- Standardization of the activities of Government.
- The removal or reductions in the amount of discretion public officials have in the purchasing process and the introduction of policies that standardize what government buys.
- The training and development of a cadre of accredited staff to deal with procurement procedures i.e. Building a competency-based System.
- Overriding all of this is the requirement for a National Policy on procurement and a legislative framework that addresses this national policy.

**b. Whether a Risk-based Framework should be integrated into the governing authority and also into the body of primary legislation?**

- The risk approach needs to be applied throughout agencies, so that the agencies will be assigned with the right competencies.
- c. How must principles and standards be applied in the context of individual procurement agreements?**
- The Rules and Principles must be applied simultaneously to produce the most cost-efficient and beneficial outcome.
- d. Where/when should the principles and rules be applied in relation to the regulations that govern the procurement legislation?**
- One ought to ensure that the underpinning principles are instituted first, followed by rules and regulations. The basic principles that must be included in any system/model are; value for money, efficiency and transparency.
  - The World Bank reviewed the procurement systems of several countries and found that those countries with a highly regulated system were ranked as more corrupt than those with fewer regulations by Transparency International.
  - A holistic and flexible system must be adopted. The World Bank has found that in this region on average, 50% of public expenditure procurement is done outside the legal framework for procurement.
- e. Based on your knowledge of procurement models and statutory frameworks found in different countries, can you identify three models that can be the foundation for a statutory framework for Trinidad and Tobago?**
- There are many models but the ones which work are jurisdiction specific. However, what most of them have in common is that they include the pillars which form a modern system i.e. transparency, technology, professionalism and a governance framework.
  - Singapore, New Zealand, UK, Denmark and Finland are interesting examples to examine.
  - Every country has specific conditions and circumstances that require them to modify their procurement system as these conditions change.

**f. How do you avoid a few large and well-resourced suppliers from dominating the market?**

- By establishing a tier system where suppliers are ranked according to their capacity/ volume or size. This is required to avoid the monopolization of the system by large entities and also avoid smaller suppliers from bidding for contracts they may be unable to fulfill.
- Mechanisms must be implemented to prevent market distortion.
- Market analysis must be conducted before introducing a framework agreement.

**g. How does a government balance the drive to attain more output with ensuring that processes are done in accordance with the rules and regulations?**

- Regardless of the organizational models government chooses to adopt in the implementation of its policies (e.g. Special purpose companies), all involved in the system must be accountable and bound by common rules.

**h. When does government policy on procurement apply in the system/market?**

- First the objectives and guiding rules of the system must be established.
- A policy may target a specific group of suppliers based on a particular requirement e.g. geographic location or size.

**i. How do you sustain what already exist and create opportunities for new growth, expansion and diversity in the system?**

- A Government must consider whether its policy promotes and facilitates capital development, innovation etc.
- It comes down to having a procurement policy that incorporates the requirements for National Development.

- Innovation is a prerequisite for competitiveness. Therefore, those in the system who are inefficient will need to reinvent themselves in order to compete in the market.

9.2 After issues emanating from Mr. Malta's presentation were addressed, inquiries were made about the scope of the World Bank's assistance.

9.3 In response, Mr. Malta informed the Committee as follows:

- i. The scope of the requirement was initially to do a review of the existing procurement arrangements and to make recommendations for a new procurement system. Since this arrangement for assistance is fee-based, the scope is therefore flexible and based on the demands of the Government.
- ii. This assistance programme began in May, 2011. During the initial phase, the Bank held discussions with Government officials and members of the private sector.

9.4 The Chairman indicated that as far as his Chairmanship of the meeting was concern, the meeting in question was his first involvement with the World Bank.

9.5 He reiterated that the World Bank was primarily engaged with the Ministry of Finance under whose remit Public Procurement falls. The Chairman explained that the Minister of Finance wanted the Committee to benefit from whatever his Ministry was pursuing in the area of public procurement, so as to avoid the Ministry impinging on the work of the committee.

*[The Officials from the World Bank exited the room]*

## **FORMULATING A POLICY POSITION**

10.1 Following the discussions with the officials from the World Bank, the Chairman directed members' attention to the issue of the formulation of a policy position.

10.2 The Chairman committed to provide members with a document stating the Government's policy position on Public Procurement, at least five clear days before the next meeting.

## **NEXT MEETING**

11.1 After some discussion, the Committee established that the next meeting will be held on **Wednesday May 09, 2012 at 9.00 a.m.** The Committee acknowledged that its next meeting may endure for the entire day.

## **ADJOURNMENT**

12.1 The Chairman thanked Members for their participation. The meeting was adjourned to **Wednesday May 09, 2012 at 9.00 a.m.**

12.2 The adjournment was taken at 12: 01 p.m.

**I certify that the Minutes are true and correct.**

Dr. Bhoendradatt Tewarie  
**Chairman**

Mrs. Lily Broomes  
**Secretary**

**April 24, 2012**

**UNCONFIRMED**  
**MINUTES OF THE FIFTH MEETING OF THE JOINT SELECT COMMITTEE  
ESTABLISHED TO CONSIDER AND REPORT ON  
THE LEGISLATIVE PROPOSALS FOR PUBLIC PROCUREMENT AND DISPOSAL OF  
PUBLIC PROPERTY AND THE REPEAL AND REPLACEMENT OF THE CENTRAL  
TENDERS BOARD ACT  
HELD IN THE ARNOLD THOMASOS ROOM (EAST), LEVEL6, OFFICE OF THE  
PARLIAMENT, TOWER D, THE PORT OF SPAIN, IWFC,  
1A WRIGHTSON ROAD, PORT OF SPAIN  
ON MONDAY MAY, 28 2012 AT 9:00 A.M.**

**PRESENT**

**COMMITTEE MEMBERS**

Dr. Bhoendradatt Tewarie	Chairman
Mr. Anand Ramlogan, SC	Member
Dr. Tim Gopeesingh, MP	Member
Mr. Prakash Ramadhar, MP	Member
Mr. Herbert Volney, MP	Member
Mr. Colm Imbert, MP	Member
Mr. David Abdulah	Member
Mr. Faris Al-Rawi	Member
Mrs. Helen Drayton	Member

**ABSENT/EXCUSED**

Mr. Collin Partap, MP	Member
Dr. Keith Rowley, MP	Member
Dr. James Armstrong	Member

**SECRETARIAT**

Mrs. Lily Broomes	Secretary
Mr. Julien Ogilvie	Assistant Secretary

**MINISTRY OF THE ATTORNEY GENERAL**

Ms. Claire Blake, SC	Senior Legal Consultant
Ms. Anne Hussein	Legal Officer I

## **INTRODUCTION**

1.1 The Chairman called the meeting to order at 9:28 a.m. and thanked those present for their attendance.

### **Consideration of Minutes of the Fourth Meeting**

2.1 The Chairman directed the attention of Members to the Minutes of the Fourth Meeting held on April 17, 2012. The Committee examined the Minutes page by page. The following amendments were made:

- i. **Page 3- in line 3 of item 4.5, insert the words “, notwithstanding the change in quorum requirements” after the word “that”;**
- ii. **Page 5- item 6.5** was amended to read as follows:

**Mr. Imbert expressed his dissatisfaction with the contents of the draft submission from the World Bank (circulated prior to the meeting). Mrs. Drayton expressed concern about the World Bank making a presentation at this late stage.**

2.2 There being no further amendments to the Minutes, the Chairman requested that a Member move the confirmation of the Minutes.

2.3 Mrs. Drayton moved and the Chairman seconded.

## **MATTERS ARISING OUT OF THE MINUTES**

3.1 No matters were raised.

## **CONSIDERATION OF GOVERNMENT'S POLICY POSITION FOR INFORMING THE LEGISLATIVE REFORM OF PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY**

4.1 The Chairman directed Members' attention to the Government's policy document on Public Procurement Reform that he committed to provide at the conclusion of the fourth meeting. He highlighted the fact that the document was forwarded to Members approximately seven days before the actual meeting day, which was in keeping with his commitment.

4.2 The Chairman indicated that the document outlined Government's policies on procurement and the principles that would inform them.



4.3 The Chairman drew Members' attention specifically to items 5, 6, 7, 8 and 11 of the document. It was agreed that it will be a more beneficial if the Committee considered the document page by page and make amendment where necessary.

4.4 Clarification was sought on whether the purpose of the meeting was to achieve consensus on the Government's policy proposals or on the work the Committee has done for the past 14 months.

4.5 In response, the Chairman stated that it would be difficult to achieve consensus on what the Committee did in the past, since the Members of the Opposition have vehemently rejected the previous approach and requested that the government produce its policy position on public procurement. He further advised that the policy document before the Committee took into account the five or six points on which consensus was reached by the Committee.

4.6 Lengthy discussions ensued as the Committee paid particular attention to item 11 of the document. The following are the key points and suggested amendments that emanated from the deliberations:

- i. The inclusion of the words "**fairness and equity**" in sub item **(vi)**;
- ii. The inclusion of the word "**adherence to local labour laws and standards**" in sub item **(ix)**;
- iii. That the Procurement regulator should report to Parliament more frequently than once per year;
- iv. There was some discussion as to whether reports on matters which the Procurement Regulator judged to be requiring further investigation should be referred to the Minister of Finance and it was subsequently agreed that referral should be made to the Minister of Finance and the Public Accounts Committee of Parliament simultaneously;
- v. **New sub item (xvi)**- that the deadline for the submission of Annuals Reports of the Procurement Regulator to Parliament will be ninety (90) days following the end of the reporting year. The audited financial statements of the Office of the Procurement Regulator to be submitted within that same timeframe. Special investigation reports are to be submitted within thirty (30) days of the initiation of an investigation to the Minister of Finance as well as to the Public Accounts Committee;

- vi. The possibility that a separate committee with the responsibility of scrutinizing reports of the Procurement Regulator and to exercise general oversight of the public procurement system being established was discussed;
- vii. Despite the foregoing suggestion for a separate committee, it was proposed that the remit of the Public Accounts Committee be modified via a possible amendment to the law governing the Public Accounts Committee, to facilitate its expanded scope to consider reports of the Regulator. The enhancement of the construct and resources available to the PAC were considered as essential requirements for the Committee to effectively achieve its expanded mandate;
- viii. That standards and requirements should be established for reports that are to be submitted to Parliament. It was posited that this will ensure that the committee scrutinizing the reports will have adequate information to make informed determinations and conclusions;
- ix. The Committee was assured by the Attorney General that in drafting procurement legislation he would ensure that the remit and the jurisdiction of the Committee with respect to this particular function is widely drafted so as to capture, not just the accounts or the report, but to allow for a panoramic overview that would allow the Parliamentary Committee to look at the management and the operations itself;
- x. **Sub item (xvii)**- that the Regulator should be appointed by the President following consultation with the Prime Minister and the Leader of the Opposition;
- xi. **New sub item (xx)**- a mechanism for expeditious treatment of objections to procurement decisions and/or dispute resolution. In addition, an approved list of adjudicators will be compiled to support the function of resolution of disputes. Disputes are to be resolved within a 30 day timeline from the date of referral;

4.7 After considering and amending the policy document, the Chairman sought the concurrence of Members on the way forward.

4.8 It was agreed that the Chairman should circulate to members a revised policy document highlighting the amendments made by the Committee for their scrutiny and comfort. The Chairman would then prepare a Draft Report for submission to Parliament based on the consensus achieved.

**NB: The amendments made to Item 11 of the policy document are reflected fully at Appendix I.**

### **OTHER BUSINESS**

5.1 The Chairman sought and received the agreement of Members not to proceed with the other items on the Agenda.

5.2 In response to whether the Committee had considered any submissions from the private sector. The Chairman advised that recent submissions from the Private Sector/Civil Society Group as well as the Ministry of Labour, were considered in the process of drafting the policy document.

### **ADJOURNMENT**

6.1 The Chairman thanked Members for their participation and for their contribution to arriving at a consensus document. The meeting was adjourned to **a date to be fixed.**

6.2 The adjournment was taken at 12: 11 p.m.

**I certify that the Minutes are true and correct.**

Dr. Bhoendradatt Tewarie  
**Chairman**

Mrs. Lily Broomes  
**Secretary**

**June 01, 2012**

APPENDIX IV

**ATTENDANCE  
RECORD  
OF  
MEMBERS OF THE  
COMMITTEE**

**Attendance Record**  
**Joint Select Committee on Legislative Proposals for Public Procurement**  
**Second Session (2011/2012)**

	<b>MEMBERS</b>	<b>1st Meeting 02.12.2011</b>	<b>2<sup>nd</sup> Meeting 06.01.2012</b>	<b>3<sup>rd</sup> Meeting 17.01.2012</b>	<b>4<sup>th</sup> Meeting 17.04.2012</b>	<b>5<sup>th</sup> Meeting 28.05.2012</b>
<b>1.</b>	<b>Dr. Bhoendradatt Tewarie</b>	√	√	√	√	√
<b>2.</b>	<b>Dr. Tim Gopeesingh</b>	√	√	√	√	√
<b>3.</b>	<b>Mr. Prakash Ramadhar</b>	Abs/exc	√	√	Abs/exc	√
<b>4.</b>	<b>Mr. Herbert Volney</b>	√	Abs/exc	√	√	√
<b>5.</b>	<b>Mr. Collin Partap</b>	√	Abs/exc	√	√	Abs/exc
<b>6.</b>	<b>Dr. Keith Rowley</b>	√	Abs/exc	√	√	Abs/exc
<b>7.</b>	<b>Mr. Colm Imbert</b>	Abs/exc	√	√	√	√
<b>8.</b>	<b>Mr. Anand Ramlogan, SC</b>	√	√	√	Abs/exc	√
<b>9.</b>	<b>Mr. David Abdulah</b>	√	√	√	√	√
<b>10.</b>	<b>Mr. Faris Al-Rawi</b>	Abs/exc	Abs/exc	√	√	√
<b>11.</b>	<b>Mrs. Helen Drayton</b>	√	√	√	√	√
<b>12.</b>	<b>Dr. James Armstrong</b>	√	√	√	√	Abs/exc

**SUBMISSION**

**on**

**LEGISLATIVE PROPOSALS ON PUBLIC PROCUREMENT  
REFORM**

**laid in Parliament on 29 October, 2010**

**Submitted to**

**THE JOINT SELECT COMMITTEE**

**APPOINTED TO CONSIDER AND REPORT TO PARLIAMENT**

**ON**

**THE LEGISLATIVE PROPOSALS TO PROVIDE FOR PUBLIC  
PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY  
AND THE REPEAL AND REPLACEMENT OF THE CENTRAL on  
22 December, 2010 by the**

**PRIVATE SECTOR/ CIVIL SOCIETY Group**

**And further amended following discussions with the  
Legal Advisor to the Joint Select Committee and  
re-submitted on April 16<sup>th</sup> 2012.**

**Private Sector/ Civil Society Group Members:**

**JOINT CONSULTATIVE COUNCIL FOR  
THE CONSTRUCTION INDUSTRY**

**TRINIDAD AND TOBAGO TRANSPARENCY INSTITUTE**

**TRINIDAD & TOBAGO CHAMBER OF INDUSTRY AND COMMERCE**

**TRINIDAD AND TOBAGO MANUFACTURERS ASSOCIATION**

## INTRODUCTORY NOTE

1) A *Joint Select Committee of Parliament (JSC)* was appointed on the 29 October, 2010 to consider:

a) *A Legislative Proposal to provide for Public Procurement and the Disposal of Public Property*

This is in effect the text of a draft Procurement and Disposal of Public Property Bill 2006 that was produced as part of the procurement reform process initiated by Government following the laying in Parliament in September 2005 of the *White Paper on the Reform of the Public Sector Procurement Regime*<sup>1</sup>. The signatories to the White paper were also responsible for the preparation of this draft bill as part of a Cabinet Appointed Committee chaired by the then Permanent Secretary in the Ministry of Finance, Kamal Mankee.

b) *A Legislative Proposal to repeal and replace the Central Tenders Board Act.*

This document, which *was prepared in 1997 by the then Attorney General, Ramesh Lawrence Maharaj*, is the text of ***The National Tenders Board Bill, 1997*** which sought to repeal and replace the Central Tenders Board Act and establish a National Tenders Board for the Government and certain statutory bodies and a Parliamentary Commission to monitor its activities.

The JSC is charged with reporting to Parliament with recommendations for new procurement legislation on the basis of these proposals.

2) *This submission is intended to assist the JSC by providing stakeholder inputs.*

**It takes the form of suggested amendments/additions** (<sup>2</sup> Amendments suggested by the Private Sector/ Civil Society Group are shown italicized in bold red) **to the text of the 2006 draft Bill taking into account elements of the 1997 Tenders Board Bill, developments since the policy statement of the White Paper from which the 2006 draft Bill evolved and discussions with the legal adviser to the JSC held on April 11<sup>th</sup>, 2011 in accordance with the direction of the JSC** (<sup>3</sup> Those suggested by the Legal Advisor to the JSC are shown italicized in bold blue). **The amended text is submitted as a Draft Public Procurement and Disposal of Public Property Bill, 2012.**

3) This submission reflects our *endorsement of the White Paper* with two (2) material differences, which are:-

(a) *The separation of investigatory powers from regulatory powers* which, in the 2006 Bill, are functions of the proposed Procurement Regulator who reports only to Parliament.

In the 2012 draft Bill it is proposed that the investigatory powers reside with the *Public Procurement Commission*, a Standing Commission of Enquiry established to monitor the procurement process and deal with grievances arising out of the procurement process. This body too reports only to Parliament.

---

<sup>1</sup> Available at: <http://www.finance.gov.tt/content/pub50.pdf>

<sup>2</sup> Amendments suggested by the Private Sector/ Civil Society Group are shown italicized in bold red.

<sup>3</sup> Those suggested by the Legal Advisor to the JSC are shown italicized in bold blue.

This accords with best practice and addresses concerns expressed in the *Uff Commission of Enquiry*. In addition, the 2012 Bill follows a similar separation of the investigatory from the regulatory function that was proposed in the *1997 National Tenders Board Bill*.

It also reflects a feature of the relevant *Jamaican legislation* in which The Contractor General Act 1985 was amended in 1999 so as to provide the Contractor General with the power to investigate any Government contract or grant, or issue any prescribed licence, while leaving to the National Contracts Commission the largely regulatory role of the granting and implementation of Government contracts.

- (b) In comparison with the White Paper and the 2006 draft Bill, this document provides for greater support for the proposed Procurement Regulator by *amplifying the role and composition of the National Procurement Advisory Council* and *establishing the organizational support of his Office* as a direct charge on the Consolidated Fund.

- 4) The text of our proposed draft Bill follows.



***BILL FOR******AN ACT******PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY BILL, 2012*****EXPLANATORY NOTE**

(These notes form no part of the Bill, but are intended only to indicate its general purport).

**Background**

*The purpose of this Bill is to provide the legal and regulatory framework to implement the Policy on Procurement Reform as contained in the White Paper entitled “Reform of the Public Sector Procurement Regime” (the White Paper), tabled in Parliament on 26 September 2005.*

*The intent is to maximize economy and efficiency in public expenditure in the area of procurement in accordance with the principle of accountability, transparency and value for money thereby increasing public confidence in the quality of governance. It does so by prescribing the legal and regulatory framework recommended in the White Paper entitled “The Reform of the Public Sector Procurement Regime” which was tabled in Parliament on 26 September 2005 by the Government.*

*The Bill reflects the assumption that expenditure involving public money triggers a prime responsibility of the purchaser who uses public funds for a transaction to ensure that the people get value. The Bill does not inhibit the common law doctrines in relation to contract nor specify a rigid process. Rather, it establishes the overarching legal framework founded on principles of public law in which contractual rights will operate. It enables customizing and responsibility of the procurement process to reside with agencies while identifying key points in the procurement system to which all agencies must adhere. The relevant design and monitoring of the procurement system within the specified parameters of the principles of accountability, transparency and value for money is the function of an independent Procurement Regulator.*

*This Bill therefore heralds the Government’s stated intention to strengthen the quality of governance by promoting these principles of good governance by systemic re-engineering of the public financial*

*management system. This Bill is thus one of a raft of relevant Bills for the re-engineering of the public financial management system.*

*Critical to the proposed new procurement regime is a clear understanding of the concept of ‘public money’. This encompasses –*

- all money received or receivable by an agency regardless of source;*
- all money received by a non-public body from an agency.*

*The legal framework will embrace expenditure by an agency which is essentially organisation using public money for a public purpose –*

- a public organization even if for a private purpose;*
- a private organization for a public purpose regardless of the source or type of funding if it can be identified that the State is ultimately liable.*

*The test therefore is not the mode of the incorporation of the body but the ultimate financial responsibility of the State.*

*The Bill also addresses the recommendations of the report of the Commission of Enquiry into the Construction Sector chaired by Professor John Uff, published in March 2010 that, inter alia, specified the need for a clear dispute resolution system which, in this Bill, is the function of the Public Procurement Commission.*

### *Brief Description of Bill*

*The crux of the Bill is the mandatory compliance with the Operating Principles, Objectives and Guidelines by all parties to transactions related to the procurement of property, services involving public money and the disposal of public property. The details of the procurement process will in general terms be dealt with in the Guidelines whilst the customized details in respect of an agency will be found in Agency Handbooks. All documents are to be publicly available.*

*The responsibility for the effective operation of the overarching system will reside in an independent Procurement Regulator who directly accounts to Parliament while the accountability for the actual acquisition of property and services and the disposal of property acquired with public money will reside with the agencies.*

*The Bill requires that all parties to a transaction involving public money for the acquisition of property and services or the disposal of public property will need to ensure that their conduct, processes and documentation conform to;–*

- *Economy, efficiency and competition;*
- Ethics and fair dealing according to the highest standards of **probity** and professionalism;
- Promotion of national industry in a manner that conforms to the international obligations of Trinidad and Tobago; and
- *Sustainable development taking into account the Social return on investment.*

*The Operating Principles and the Objectives will inform the National Procurement Guidelines which, in turn, will inform the content of Handbooks for various categories of transaction which are to be prepared by the agency.*

*The Guidelines will be developed by the Procurement Regulator in consultation with the National Procurement Advisory Council. The Council will comprise a total of fourteen (14) persons including representatives of private sector organizations, of those organizations appointed by the President to represent civil society, and representatives from the public sector including the Ministry of Finance and the Tobago House of Assembly.*

*The Bill also provides for a Public Procurement Commission to treat with irregularities and complaints of non-compliance with the Operating Principles, Objectives and Guidelines. The members of the Commission are to be appointed by the President and are answerable to Parliament.*

*Apart from the accountability framework the Bill also prescribes penalties for non-compliance with the Operating Principles, Objectives and Guidelines: a fine of \$500,000 and imprisonment for seven (7) years where no other sanction is prescribed. As these penalties indicate an indictable offence, the Bill ensures the applicability of the Proceeds of Crimes Act, 2000. This may be used by the State for the tracing of assets to reclaim public money in the event that there is a breach of the Act.*

*Where a transaction is found either by a court or by the Public Procurement Commission to be in breach of the Act it is prescribed to be illegal – the common law result of a contract in breach of public policy.*

*For the purpose of operational flexibility for the local conditions and to take into account the culture of an agency, the Bill enables the Chief Executives of agencies (which include ministries and departments, statutory bodies and their subsidiaries, state controlled enterprises and their subsidiaries) to issue*

*instructions to treat with the procuring procedures of their respective agencies. These Agency Instructions are to be complied with by all parties to a transaction so long as they do not breach the Operating Principles, Objectives and Guidelines and will include details of the authorized purchasing officers and purchasing responsibilities, including the quanta of their purchasing limits.*

*Apart from the Guidelines and the Agency Instructions of the Chief Executive, the relevant procedures in respect of the transaction to aid purchasers using public money will be provided in support documents as Handbooks. These may be developed by the Procurement Regulator as model Handbooks which can be customized by the agency. The Bill thus enables the internal procuring rules of a state owned enterprise to be incorporated into the Handbook for the respective agency. The Bill thus enables the incorporation of existing procedures into the proposed legal and regulatory framework. The Bill enables model Handbooks to be designed for different types of categories of transactions such as those pertaining to construction, consultancy services and Information Technology.*

In addition to developing the mandatory Guidelines in consultation with the National Procurement Advisory Council, the Procurement Regulator will also have the function of –

- enabling agencies to explore alternative service delivery options;
- promoting flexible and accountable *systems for procurement*;
- encouraging a streamlined Government purchasing framework;
- *implementing a procurement system to foster* small to medium enterprises;
- providing best practice advice on the conduct of procurement *including promoting electronic transactions; and*
- *auditing and reviewing the procurement system to ensure compliance with the Operating Principles and Objectives which will require generally the monitoring of award and implementation of transactions.*

The *Procurement* Regulator will also be required to prepare an Annual Report *to be submitted* directly to Parliament identifying *inter alia*:

- the strengths and weaknesses of the procurement system and steps taken to rectify any weaknesses;
- the total value of contracts awarded by agencies so that Parliament can get an idea of the amount of

---

public money involved in procurement; and

- *outcomes of investigations, and lessons learnt which are to be or have been fed back into the procurement system through amendment of the Guidelines.*

*The Procurement Regulator will be supported by a statutory body to be known as the Office of the Procurement Regulator. The expenses of both offices are to be a charge on the Consolidated Fund.*

*The Public Procurement Commission has, with a direct reporting accountability to Parliament, the function of investigating breaches of the procurement system by parties to a transaction involving the expenditure of public money.*

*In so doing, it will have the powers of a Commission of Enquiry as if it were a Commission properly constituted under the Commissions of Enquiry Act, Chapter 19:01. The sanctions it may employ are, inter alia, to order a suspension of the contract pending the hearing in a court of law or to find the transaction to be in breach of the Operating Principles and Guidelines resulting in it being deemed illegal. It is noted that any decision it makes is subject to the Judicial Review Act, 2000.*

*However, persons bringing frivolous complaints to this body will be penalized.*

*Where parties comply with the Operating Principles, Objectives and Guidelines it is highly unlikely there will be much recourse to the Public Procurement Commission.*

The Bill is in **6** Parts as follows:

## **PART I – PRELIMINARY**

This Part deals with operational matters pertaining to the Bill.

*The Bill is to commence on a date to be proclaimed. However, as the National Policy on procurement in the form of the White Paper was tabled in Parliament on 26 September 2005, this means that all agencies would have had to conform to the Operating Principles and Objectives in all their transactions from that date.*

### *Clause 1*

*Therefore validates the duty by ensuring that the application of the Operating Principles and Objectives are deemed to apply from the date of the tabling of that Policy. This general duty is retrospective to 26 September 2005 – the date the Policy was tabled in Parliament. The provision entrenches the duty required of agencies*

---

*even prior to the passage of the Bill to conform to Government Policy.*

Clause 2

Contains the definitions pertaining to the Bill.

Key definitions to note are –

“agency” – *means a body incorporated or otherwise that uses public money.*

“property” – *means real or personal property, or other tangible or intangible property including a right, interest, title, claim, chose in action, monetary or financial instrument, present or future, vested or contingent. This definition would encompass those matters that are the traditional focus of procurement such as goods works and services as well as intellectual property rights;*

“public property” means property that is acquired or is to be acquired by an agency, or is in the care, control or custody of an agency;

“public money” *all money received by a public body, regardless of source;*  
*all money received by a non-public body from a public body.*  
*The legal framework will embrace expenditure by a –*

- *public organization even if for a private purpose; a private organization for a public purpose regardless of the source or type of funding if it can be identified that the State is ultimately liable.*
- *The test therefore is not the mode of the incorporation of the body but the ultimate financial responsibility of the State.*

“procurement” *means the process of acquiring property and services commencing with the identification of the need for the acquisition and ending with the performance of the related contract. This definition conforms to current best practice;*

“public procurement” *means procurement involving the use of public money; (this definition is designed to encompass BOLT (Build, Own, Lease, Transfer), BOOT (Build, Own, Operate, Transfer) and DFC (Design, Finance, Construct) schemes or other funding schemes for the provision of capital works which can be found to be ultimately to the benefit of the public);*

---

*“services” includes consultancy services, professional services, and any other activity which can be classified as services. This would encompass the provision of legal services, architectural services and maintenance services;*

*“transaction” means any contract, agreement or arrangement for, or in relation to, public procurement or disposal of public property. This definition would encompass related negotiations.*

The nature of these definitions illustrates the ambit of the Act. *The critical element in the triggering of the application of the law is the use of public money in a transaction, not the institutional corpus of the spender nor the purpose nor the classification of the process that can be classified as commercial or private in the context of that transaction.*

### *Clause 3*

*Provides that this Act will bind the State.*

## **PART II – PROCUREMENT FRAMEWORK**

This Part establishes the *legal and* regulatory framework which will apply to all parties to a procurement transaction to ensure that it conforms to the Operating Principles defined as *Accountability, Transparency and Value for Money together with the Objectives of economy, being inter-alia efficiency, effectiveness, competition, ethics, and fair dealing. The promotion of national policy is also required to be addressed in any transaction. These requirements also apply to those involved in the disposal of public property.*

*This Part also identifies the consequence of entering a transaction with an unauthorized purchaser.*

### *Clause 4*

*States that the Operating Principles and Objectives apply to every transaction and requires that a person who is a party to a transaction conform to the Operating Principles of Accountability, Transparency and Value for Money. A person who is acting on behalf of an agency shall ensure the transaction reflects Value for Money. All parties to the transaction will also address the Objectives of economy, efficiency and competition, ethics and fair dealing according to the highest standards of probity and the provision of proceeds for national development such as the Fair Share Programme. All parties as of law are to ensure that the transaction conforms to the Guidelines.*

*Where there are no Guidelines in place, the operation of the Operating Principles and Objectives will be determined by current best practice.*

---

*Clause 5*

*Provides for the development of National Procurement Guidelines ('the Guidelines') by the Procurement Regulator in consultation with the National Procurement Advisory Council. These Guidelines are to be tabled in Parliament and are to be consistent with the Act, and essentially ensure the operation of best current procurement practice. It is expected that the Guidelines will, inter alia, address issues ranging from the format and content of Requests for Proposal to mechanisms of review of the whole procurement cycle, the publication of details in respect of the operation of best current practice in procurement which would encompass e-procurement, issues of conflict of interest, and emergency measures, to mention a few.*

*The Guidelines may also include direction of a tender process to apply to a specific transaction. The clause also requires the Procurement Regulator to consult with the private sector and civil society represented on the National Advisory Council which also has representatives of the public sector, when developing the Guidelines. The Guidelines are to be published in the Gazette and are a statutory instrument for the purposes of the Statutes Act.*

*Sample Procurement Guidelines are provided in the White Paper (Annex 1).*

*Clause 6*

*Enables the Procurement Regulator to develop generic Handbooks for categories of transactions as guidance material for agencies. These may supplement those developed by agencies. However, the prime responsibility for the development of handbooks lies with the Chief Executive. All Handbooks must conform to the Operating Principles, Objectives and Guidelines and must be published for public comment for a period of 30 days prior to implementation.*

*Clause 7*

*Enables the Chief Executive to issue Agency Instructions for the purpose of expediting transactions. Such Instructions must conform to the Act, Regulations and Guidelines and identify the authorized purchasers for the conduct of a transaction for or on behalf of an agency. An Agency Instruction that does not conform is void.*

*Clause 8*

*Provides that where there is a divergence from an Agency Instruction the Procurement Regulator needs to be accordingly advised, in writing with reasons.*

*Clause 9*



*Identifies the Chief Executive and any person in an agency so authorized by an Agency Instruction to have the lawful authority to enter a transaction. Where a person wrongly enters or represents himself as having authority to enter a transaction, he commits an offence. The clause also treats with the personal liability for damages of an authorized person where the transaction breaches the Act. A transaction that is entered into by a person without lawful authority is voidable at the instance of the agency.*

*The clause also provides that an authorized person is subject to the Integrity in Public Life Act, 2000. The clause requires publication of authorized persons and their spending limits.*

*The clause also provides that neither Cabinet nor a Minister shall be an authorized person.*

#### *Clause 10*

*Places the onus on suppliers to ensure that they are treating with persons who have the appropriate authority to enter a transaction. This is possible because of the requirement on agencies to publish details of authorized persons in clause 9.*

*The duty on suppliers to conform to the Operating Principles, Objectives and Guidelines is already provided for in clause 4. However, where in the course of an investigation, the Public Procurement Commission or, in the course of an action, a Court, finds that a supplier is recklessly dealing or has recklessly dealt with a non-authorized person, that supplier shall be prohibited, as of law, from entering into any future transaction with an agency for five years either personally or as an officeholder of a company. This means that if a supplier is dealing with a purchaser believing in good faith that the purchaser is an authorized purchaser and after exercising due diligence the purchaser is found to be an unauthorized purchaser the supplier will not be penalized. The same logic applies to transactions involving disposal of property particularly as it affects the would be beneficiary of that disposal.*

### **PART III – PUBLIC PROCUREMENT COMMISSION**

*This Part enables an aggrieved person to complain, in the manner prescribed, to the Public Procurement Commission, to be appointed by the President and directly accountable to Parliament, that a transaction breaches the Operating Principles, Objectives and Guidelines. The Public Procurement Commission may, either on its own initiative or on the basis of a complaint, investigate any transaction so as to ensure conformity to the Operating Principles, Objectives and Guidelines. The Commission may, pending the*

*outcome of the investigation, suspend the process and employ mediation techniques in the course of the investigation. At the end of the investigation the Commission must advise all parties to the transaction of the outcome of the investigation and report accordingly to Parliament.*

*After investigating the complaint the Commission may confirm a decision as a consequence of mediation, direct a continuation of the suspension pending an appeal, find the transaction has been conducted by an unauthorized person, find that the transaction is contrary to public policy in that it breaches the Operating Principles, Objectives or Guidelines or find that the complaint is frivolous and vexatious.*

*The Part also enables the Commission to refer the matter to an appropriate authority for further dealing. All details of investigations will be reported to Parliament in the annual report. This does not preclude the Commission from submitting a special report with respect to a particular investigation.*

*Certain procedural issues are specified in the Act. In the event there is a gap in the powers of a Commission in respect of process, the Commissions of Enquiry Act can be availed of to fill the gaps.*

#### *Clause 11*

*Establishes a Public Procurement Commission for the purpose of investigating complaints. This clause provides for the appointment of members of a Public Procurement Commission to be appointed by the President in the exercise of his discretion after consultation with the Prime Minister and the Leader of the Opposition. The persons to be appointed as members of the Commission are to have qualifications in law, finance or engineering.*

#### *Clause 12*

*Adumbrates the functions and powers of the Public Procurement Commission to investigate transactions and resolve complaints. The Commission is to have the powers of a Commission of Enquiry as if it were constituted under the Commissions of Enquiry Act (Chap. 19:01) and also operates as a mediator in respect of resolving a complaint as if appointed as such under the Mediation Act (Chapter 5:32).*

*The Act specifically mandates the Commission to expedite issues before it in a timely fashion so as to minimize negative economic impact.*

#### *Clause 13*

*Details some operational matters of the Commission viz that it is not to be subject to the direction or control of any person for its functions but is directly accountable to Parliament. Where a transaction under enquiry exceeds TT50 Million, no less than three members of the commission shall hear the matter.*

---

*Clause 14*

*Enables a person who has a complaint that a transaction does not comply with the Act to complain to the Commission. The Commission may also on its own initiative institute the process as regards complaints.*

*Clause 15*

*Specifies the procedure of the Commission when investigating a complaint.*

*Clause 16*

*Treats with the powers of obtaining of material pertinent to the investigation by the Commission.*

*The Commission or a person authorized by it in writing will be able to access documents or property in the course of an investigation. An entry on private property (i.e. not belonging to an agency) can only be effected with the consent of the owner or occupier. Where that consent is not forthcoming, the Commission or person authorized by it to do the investigation shall obtain a warrant to do so. Copies of books, records or documents including those in digital format are also to be made available to the Commission.*

*Clause 17*

*Provides for the Commission to summon certain persons to give evidence as a witness.*

*Clause 18*

*Enables the Commission at the expiry of an enquiry to confirm a decision as a consequence of mediation, direct a continuation of a suspension pending an appeal to the Court or find that the transaction is contrary to Operating Principles, Objectives and Guidelines. The Commission may also refer the matter to an appropriate authority for further action.*

*This clause also provides for a mandatory report to Parliament on the outcome of any investigation.*

*Clause 19*

*Statutorily declares a transaction to be illegal once it is found as a fact to be in breach of the Operating Principles, Objectives and Guidelines by the Commission. This clause also protects the rights of innocent third parties to a transaction so declared.*

*Clause 20*

*Enables the Commission to surcharge a complainant for costs if the complaint is frivolous or vexatious.*

---

**Clause 21**

*Enables the Commission to make a special report to Parliament in the event that it finds that an officer of an agency is in breach of his duty, commits misconduct or a criminal offence, which report it further refers to the appropriate agency for further action.*

**Clause 22**

*Protects proceedings from being voided for want of form.*

**PART IV – THE *PROCUREMENT* REGULATOR**

*This Part treats with the appointment of a Procurement Regulator. The functions and powers together with operational and institutional matters pertinent to the Procurement Regulator such as the provision of staff and other resources by way of the establishment of the Office of the Procurement Regulator are treated with as well. The Part also provides for an audit of this agency by the Auditor General.*

**Clause 23**

*Provides for the establishment of the office of the Procurement Regulator who is to be appointed by the President in the exercise of his own discretion for a contract of five (5) years or more but not exceeding seven (7) years.*

*The President chooses from the recommendations made by Parliament which considers the list of names submitted to Parliament by a Joint Select Committee specifically established to recruit the Procurement Regulator.*

*This clause also provides for the removal of the officeholder in the event that he is infirm of mind or body, or misbehaves. The President may also appoint a person to act and such person has the power to finish what the Procurement Regulator commenced before he went on leave or other temporary absence. The provisions of the Integrity in Public Life Act, 2000 apply to the office holder.*

**Clause 24**

*Establishes the Office of the Procurement Regulator to comprise the staff and support for the Procurement Regulator. The costs incurred for the performance of that Office shall be a direct charge on the Consolidated Fund.*

**Clause 25**

Prescribes the functions of the *Procurement* Regulator. *The prime function is to ensure an effective, efficient and relevant procurement system that conforms to the Operating Principles, Objectives and Guidelines. The Procurement Regulator is required therefore to develop, implement and review Guidelines in consultation with the National Procurement Advisory Council for the implementation of the Operating Principles and Objectives. This provides for inputs from industry and service providers. The functions of the Procurement Regulator also include, inter alia, establishing a comprehensive database with information on procurement opportunities, processes, contract awards and prices, the promotion of public understanding of procurement, the fostering of improvements with the use of technology including e-commerce, the receipt of complaints and reporting to Parliament.*

*This clause states that in the exercise of his functions the Procurement Regulator is not subject to the direction or control of any person. In this regard his independence of office is analogous to that of the Auditor General.*

#### *Clause 26*

*Provides that the cost and related expenses of the Procurement Regulator is a direct charge on the Consolidated Fund.*

#### *Clause 27*

*Provides for the Auditor General to audit the Procurement Regulator and the Office of the Procurement Regulator annually.*

#### *Clause 28*

Requires the *Procurement* Regulator similar to the Auditor General, to report at least annually to Parliament *but no later than forty (40) days after the expiry of the financial year.* The Report is required to inform Parliament of the total figure of contracts awarded *involving public money and cost overruns by agencies, details of transactions involved in a project including the beneficiaries of the transaction and the value of those transactions to the State,* outcomes of investigation including lessons learnt, *details of changes to the Guidelines to implement best practice and recommendations including those of the National Procurement Advisory Council.*

*The Report does not need to include details of contracts of value less than \$50,000 or contracts for the settlement of a legal liability. The Speaker is to table the Report within 28 days of receipt.*

---

**PART V – NATIONAL PROCUREMENT ADVISORY COUNCIL**

---

*This Part identifies the membership and functions of the National Procurement Advisory Council which essentially, as a consultative body, provides inputs into the design and content of the Guidelines so as to ensure relevance.*

**Clause 29**

Establishes the National Procurement Advisory Council in a manner so as to avoid allegations of executive manipulation of the membership. The membership of the National Procurement Advisory Council, in conformity with the Policy, will comprise *fourteen (14) persons being the* nominees of three civil society organizations which are publicly acknowledged as having a concern for good governance, five organizations representing the construction, manufacturing and retail sectors of Trinidad and Tobago, two representing labour and professional organisations, *a nominee representing the State Owned Enterprises, a nominee of* the Tobago House of Assembly, an *ex officio* member from the Ministry of Finance *and the Chief State Solicitor*.

The nominating organizations are to be selected by the President in his own discretion after taking into account the record of those organizations in serving the public interest. *The Procurement Regulator is to advise the public of the successful nominees by notice in the Gazette and a major circulating daily newspaper. Nominees will hold their positions for a term of 3 years*

*Operational matters for the Council are specified in the Second Schedule.*

*The Council is to present an annual report to the Procurement Regulator who includes that report in his own report to Parliament.*

**Clause 30**

Provides that the function of the Council is to consider the effectiveness and efficiency of the procurement system and to make recommendation to the *Procurement* Regulator in the development of the Guidelines and Handbooks so as to ensure conformity with the Operating Principles, *Objectives and Guidelines*. The Council, *when so doing*, is to canvass the views of the national community as widely as possible. *The Council may also co-opt representatives of agencies to assist in its function but such persons will not have a vote.*

**Clause 31**

*Requires the Procurement* Regulator to provide secretariat services to the Council.

**PART VI – MISCELLANEOUS**

*This Part deals with matters that enhance effective implementation of the Act including protection from liability, statutory obligations of reporting by agencies, offences, repeal of the Central Tenders Board Ordinance, 1961 and transitional arrangements. To ensure there is consistency in the definition in respect of expenditure of public money, the Exchequer and Audit Act has been consequently amended.*

*Clause 32*

*Protects a member of the Commission, from liability.*

*Clause 33*

*Provides for privilege of information, in the course of investigation as if in a court of law and protection from defamation proceedings.*

*Clause 34*

*Provides that a request made under this clause is to be treated as if, it were made under the Freedom of Information Act 1999. It is to be noted that, as some agencies affected are currently outside the jurisdiction of the Freedom of Information Act, 1999, there is need for this provision. The section also provides that the failure to disclose on the grounds of confidentiality cannot encompass mere embarrassment that such disclosure would afford. The section is to apply notwithstanding any other law.*

*Clause 35*

*Requires that the person authorized to enter a transaction, publish specified details of the award of a contract, or any variation and other relevant details contemporaneously with the making of the award. This provision not only conforms to current best practice but also ensures transparency.*

*Clause 36*

*Guarantees legal remedies under the Judicial Review Act, 2000 to be available to any decision made in the course of procurement.*

*Clause 37*

*Requires a person who has a reasonable belief that, collusion between all or any of the parties, or any breach of the Act has occurred, as a matter of law, to report accordingly to the Procurement Regulator or the Public*

*Procurement Commission. The Procurement Regulator will be required to refer that report to the Public Procurement Commission and report accordingly to Parliament. This promotes transparency.*

#### *Clause 38*

*Treats with offences: It provides that a person who fails to comply with the Act commits an offence.*

*This clause also makes it an offence to hold assets that are prima-facie disproportionate to emoluments one can be expected to receive as an officer, without justification. The word “disproportionate” in subsection (3) conveys the idea that the acquisition of the total value of the assets under the control of a person who was an officer of the agency could not reasonably have been afforded by the person at that date given total emoluments provided.*

#### *Clause 39*

*Provides a general penalty for an offence under the Act to be a fine of \$500,000 and 7 years imprisonment. In addition an offence under this Act is deemed a “specified offence” for the purpose of the Proceeds of Crime Act, 2000 thereby attracting the capacity of the State to trace public funds.*

#### *Clause 40*

*This clause protects a ‘whistleblower’ from being demoted, harassed or otherwise discriminated against because of his report made under Clause 39.*

*It will also be an offence to discharge, suspend, demote or otherwise negatively treat a person simply because they have reported a breach of the Act to the Procurement Regulator.*

#### *Clause 41*

*Prescribes a Parliamentary majority of 2/3 in the event of future amendment of sections 4 to 10 of the Act. This entrenches the framework and acknowledges that the flexibility of process to ensure competitiveness will be through the subordinate instruments such as the Guidelines and Handbooks. Parliament, by this provision, is entrenching the provisions of this Act particularly in the future event that a disaffected executive with a simple Parliamentary majority would want to change the framework.*

#### *Clause 42*

*Prescribes the regulation making power to reside with the President.*

#### *Clause 43*



*Validates, to the extent of their validity, transactions entered into by those agencies that fall outside the ambit of the Central Tenders Board where those transactions conform to the agency's internal tendering rules and the Operating Principles, Objectives and Guidelines as of 26 September, 2005, the date of the tabling of the Policy in Parliament.*

#### *Clause 44*

*Repeals the Central Tenders Board Ordinance, 1961 and validates any transaction entered into or in force under the authority of the Central Tenders Board on behalf of an agency at the commencement of this Act as validly conducted by an agency under this Act.*

*The section also provides that a reference to the Central Tenders Board Ordinance 1961 or the Director of Contracts in any legislation shall be construed as reference to this Act or the Procurement Regulator as the context demands.*

*The section also provides for the continuation of the Central Tenders Board Regulations, 1965 Regulations and the Central Tenders Board (Defence Force and Protective Services (No. 2) Order 1992), pending the formulation of in-house tender procedures by an agency, and the Guidelines, notwithstanding the repeal of the principal legislation pending the implementation of the Guidelines.*

#### *Clause 45*

*Provides for, the consequential amendments to the Exchequer and Audit Act which include revised definitions of "public money", "revenue" and "statutory body" so as to harmonize public expenditure on the acquisition of property and services with provision in the Exchequer and Audit Act.*

#### *First Schedule*

*Specifies the framework for the establishment of Procurement Guidelines.*

#### *Second Schedule*

*Provides for the administration and terms and conditions of members of the Public Procurement Commission.*

#### *Third Schedule*

*Provides for the operation of the National Procurement Advisory Council including the quorum requirement resignation of an officer, termination of appointment and remuneration of members.*

***PUBLIC* PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY BILL, 2010****Arrangement of Clauses***Clauses***PART 1 – PRELIMINARY**

1. Short title and commencement
2. Interpretation
3. Act to bind the State

**PART II – PROCUREMENT FRAMEWORK**

4. ***Application of the Act***
5. Guidelines
6. Handbooks as guidance material to supplement Guidelines
7. Chief Executives to issue Agency Instructions to supplement Guidelines
8. ***Report of action inconsistent action with Agency Instruction***
9. ***Authorized person for the purpose of a transaction***
10. Supplier not to enter transaction unless with an authorized purchaser

***PART III – PUBLIC PROCUREMENT COMMISSION***

11. ***Establishment of the Public Procurement Commission***
12. ***Functions and powers of the Commission***
13. ***Matters pertaining to the performance of the Commission***
14. ***Instituting process to treat with a complaint***
15. ***Procedure of Commission***
16. ***Access to property of an agency***
17. ***Witness on oath***
18. ***Outcome of Commission***
19. ***Illegal transaction***
20. ***Surcharge for frivolous complaint***
21. ***Special Report***
22. ***Proceedings not to be voided for want of form***

***PART IV – PROCUREMENT REGULATOR***

23. Appointment of the ***Procurement*** Regulator **by the President**
24. ***Establishment of the Office of Procurement Regulator***
25. ***Functions and Powers of the Procurement*** Regulator
26. **Support for the Procurement Regulator**
27. ***Audit of the Procurement Regulator***
28. Procurement Regulator **Parliamentary Reporting**

**PART V – NATIONAL PROCUREMENT ADVISORY COUNCIL**

29. National Procurement Advisory Council
30. Functions *and powers* of the National Procurement Advisory Council
31. Secretariat services to be provided by the Procurement Regulator
32. Procurement Regulator to attend Council

**PART VI – MISCELLANEOUS**

33. *Protection from liability*
34. *Privileged information and protection from defamation*
35. Procurement records to be public
36. *Agencies to publish award of contracts*
37. *Application of Judicial Review Act, 2000*
38. Reporting *on collusion*
39. Offences
40. **General**
41. *Protection for whistleblowers*
42. Amendment to Act
43. Regulations
44. Validation of transactions by agencies outside the jurisdiction of the Central Tenders Board Ordinance, 1961
45. Repeal and savings *of transaction within the jurisdiction of the Central Tenders Board Ordinance, 1961*
46. *Consequential amendments to the Exchequer and Audit Act, Chap. 69:01*

*First Schedule*

*Second Schedule*

*Third Schedule*



“Agency Instruction” means an instruction issued in accordance with section 7;

“appropriate authority” means -

- (a) the Auditor General;
- (b) the relevant Service Commission;
- (c) the Commissioner of Police;
- (d) the Director of Public Prosecutions;
- (e) an authority as prescribed;

***“authorized person” means a person referred to in section 9;***

“Chief Executive” means a person who **is the accounting officer of an agency;**

***“Commission” means the Public Procurement Commission established by section 11 and a ‘member of the Commission’ has the corresponding meaning;***

“Constitution” means the Constitution of the Republic of Trinidad and Tobago;

“Council” means the National Procurement Advisory Council established in accordance with section 29;

“disposal of public property” includes the transfer without ***consideration by way of sale or lease, a concession, a licence, or other alienation, of public property;***

“Guidelines” means the National Procurement Guidelines referred to in section 5;

***“ Handbook” means the handbooks referred to in clause 6***

***“Intellectual Property” as reflected in the Copyright Act of 1997***

***“Objectives” means the objectives specified in section 4(2) (b);***

***“Office of the Procurement Regulator” means the body established by section 24;***

*“Operating Principles” means the principles of accountability, transparency and value for money;*

“procurement” means the process of acquiring property or services commencing with the identification of the need of the property or services and ending with the performance of the related contracts;

“Procurement Regulator: means the person performing the duties of, or occupying, the office of the Procurement Regulator as established by section 23;

*“property” means real or personal property or other tangible or intangible property including a right, interest, intellectual property, title, claim, chose in action, monetary or financial instrument, whether present or future or vested or contingent;*

“public money” means money that is:-

- (a) received or receivable by *the State, a statutory body or a state controlled enterprise;*
- (b) raised by an instrument from which it can be reasonably inferred that the State accepts ultimate liability in the case of default;
- (c) *spent or committed for future expenditure, by the State, a statutory body or a state controlled enterprise;*
- (d) *distributed by the State, a statutory body or a state controlled enterprise to a person; or*
- (e) *raised by a private body in accordance with a statutory instrument, for a public purpose;*

“public procurement” means procurement involving the use of public money;

*“public property” means property acquired, or in the process of being acquired, by an agency or in the care, control or custody of an agency whether as a trustee or not;*

Chapter 81:01

“services” *includes* consultancies, professional services, *management services* and *related* activities;

“State controlled enterprise” means a company that is registered under the Companies Act -

*(a) for a public purpose; or*

*(b) where the government or any person controlled by the government is entitled to exercise control directly or indirectly over the affairs of the company;*

“statutory body” means -

(a) the Tobago House of Assembly as established by section 141A of the Constitution;

(b) a board, commission, body **or body corporate established by an act other than that regulating the conduct of professional occupations;** or

“supplier” includes *a contractor or a consultant;*

“transaction” means any contract, agreement, licence or arrangement for or in relation to -

*(a) public procurement;*

*(b) the use of public property by an agency; or*

*(c) the disposal of public property.*

*“value analysis” means an analysis of the functions of a programme, project, system, product, items of equipment, building, facility, service or supply by a person, directed at improving performance, reliability, quality, safety and life-cycle.*

*(2) For the purpose of this act “procurement “does not include:-*

*a) Grants (with in the form of a contract or conditional gift)*

*b) Investment or divestment*

*c) Sales by tender*

*d) Loans*

*e) Purchases of property or services used in the production of goods for resale*

- f) *Any property right not acquired through the expenditure of Public money- for example, a right to pursue a legal claim for negligence;*
- g) *Statutory appointments;*
- h) *appointments made by a Minister using the executive power) – for example, the appointment of a person to an advisory board: or*
- i) *(engagement of employees in the public service) on contract or the appointment of public officers in the public service”.*

Act to bind the State      3.    This Act binds the State.

## PART II - PROCUREMENT FRAMEWORK

Application of  
***Principles and Objectives***

4.    ***(1) The Operating Principles of Accountability, Transparency and Value Value for Money, together with the Objectives of Public Procurement which are:***

- (a) economy, efficiency and competition;***
- (b) ethics and fair dealing according to the highest standards of probity and professionalism;***
- (c) the promotion of national industry effecting sustainable development, poverty alleviation and environmental management;***
- (d) a social return on investment shall apply to every transaction.***

***(2) A person who is a party or seeks to be a party to a transaction shall ensure that the transaction-***

- (a) conforms to the Operating Principles specified in sub-section 1;***
- (b) addresses the Objectives specified in sub-section 1; and***
- (c) conforms to the Guidelines and where no Guidelines are in place, to current best practice.***

***(3) A person who fails to comply with subsection (2) and (3) commits an offence.***



Guidelines

5. (1) The Procurement Regulator shall develop *the National Procurement Guidelines* **taking into account the First Schedule -**

- (a) for the implementation and monitoring of the Operating Principles and Objectives in their application to a transaction **and the system of public procurement;**
- (b) **for** the publication of details in respect of a transaction;
- (c) to treat with matters for, **and** in relation to a transaction;
- (d) to ensure *best practices in public procurement in every matter in relation to-*
  - (i) *identification of needs;*
  - (ii) *feasibility study;*
  - (iii) *value analysis.*
- (e) **handling of complaints by Agencies in respect of a transaction estimated below the thresholds specified in the Guidelines.**

(2) The Guidelines may address the following:

- (a) general rules relating to procurement including those with respect to -
  - (i) the format and content of requests for proposals;
  - (ii) the means of improving the process of competitive tendering and contracting;
  - (iii) the system of using bonded **or preferred** suppliers;
  - (iv) the preference, according to Government policy, for local suppliers and small business in procurement;
  - (v) **the principle of** open and effective competition including public notification of opportunities and evaluation criteria to be used in the bid process;
  - (vi) advertising rules and time limits;
  - (vii) participation and qualification **of interested parties to a transaction;**

- (viii) the tender documentation and technical specifications;
- (ix) the tender evaluation and award criteria;
- (x) the reporting **and monitoring** requirements;
- (xi) conflict of interest;*
- (xii) measures in times of emergency;*
- (xiii) whole of government procurement contracts;*
- (xiv) select tendering or direct sourcing as a means of procurement;*
- (xv) dealing with complaints at the agency level*
- (b) the procurement indispensable for national security or national defence purposes;**
- (c) public consultation on major contracts;
- (d) the use of a joint undertaking by all parties to a transaction to comply with an agreed code of ethics with sanctions;
- (e) the consideration of government policies in public procurement;
- (f) an independent review process **to include civil society at critical points of the system of public procurement;**
- (g) reporting requirements of agencies;**
- (h) monitoring of the performance of the contract;**
- (i) the relationship of the Handbooks to the Guidelines;
- (j) general rules on disposal of public property including those with respect to disposal of unserviceable, surplus or obsolete public property and sale or lease of real property in the care, control or custody, of an agency;**
- (k) Parliamentary approval of Government to Government contracts involving the use of public money; and**
- (l) any other matters as are prescribed.**

(3) The Procurement Regulator, when developing the Guidelines, shall consult with the Council.

(4) The Guidelines –

- (a) shall be consistent with this Act;

- (b) may adopt or adapt any published **international** standard **in accordance with best procurement practice;**
- (c) shall specify exemptions in certain restricted circumstances *that are not inconsistent with the public interest;*
- (d) *shall be public and easily available.*

(5) The Procurement Regulator shall submit the Guidelines *directly to Parliament to be tabled no later than ten (10) sitting days of receipt by Parliament.*

(6) *The Guidelines* shall be subject to negative resolution of Parliament.

(7) *The Procurement Regulator shall publish the Guidelines in the Gazette.*

8) *The Guidelines, once published, are a statutory instrument for the purpose of the statutes Act.*

9) *A party to a transaction who fails to comply with the Guidelines commits an offence.*

Chapter 3:20

Handbook as  
guidance  
material to  
supplement  
Guidelines

6. (1) The Procurement Regulator may develop Handbooks *or other material* to serve as detailed guides *for the process to be followed in respect of specified categories* of transactions.

*(2) The Chief Executive shall cause a Handbook to be published in respect of the procedures to be followed by his agency in respect of procurement and disposal of public property.*

*(3) A Handbook, whether produced by the Procurement Regulator or an agency shall conform to the Operating Principles, Objectives and Guidelines.*

*(4) A Handbook shall be published for public comment for 30 days before it becomes operational.*

Chief Executive  
to issue Agency  
Instructions to  
supplement  
Guidelines

7. (1) The Chief Executive may issue, in writing, an internal administrative direction for the purpose of expediting a transaction *to be known as an Agency Instruction*.

*(2) The Chief Executive shall forward a copy of the Agency Instruction to the Procurement Regulator before its date of operation.*

*(3) An Agency Instruction shall-*

- (a) conform to the Act, Regulations and Guidelines and take into account any guidance material such as Handbooks issued by the Procurement Regulator so that the practices of the agency relating to procurement and disposal of public property conform to the Operating Principles, Objectives and Guideline; and
- (b) authorize a person to enter into a transaction for, or on behalf of, the agency.

*(4) An Agency Instruction that fails to conform to the Act, Regulations or Guidelines is void.*

Report of *actions*  
inconsistent  
with Agency  
Instruction

*8. A person being an officer or employee of an agency who is a party to a transaction and makes a decision that is inconsistent with an Agency Instruction shall make a written record for the Procurement Regulator of the reasons of the decision for so acting.*

Authorized  
person for  
the purpose of

9. (1) A Chief Executive, *or a person authorized in accordance with an Agency Instruction*, has the authority to *execute* a transaction or enter a *related negotiation* for or on behalf of the agency which he serves.

transaction

*(2) The Chief Executive may authorize, by an Agency Instruction, a person to enter a transaction or related negotiation for or on behalf of an agency.*

*(3) The Chief Executive shall cause the names and positions of the persons authorized under subsection (2) and the extent of their capacity to treat, to be published.*

*(4) A transaction that is entered into by a person without lawful authority is voidable at the instance of the agency.*

*(5) A person authorized to act for or on behalf of an agency may be personally liable for the damages incurred by the agency as a consequence of entering a transaction in breach of the Operating Principles, Objectives and Guidelines.*

*(6) An authorized person under subsections (1) and (2) is deemed to be “a person in public life” for the purposes of the Integrity in Public Life Act, 2000.*

*(7) A person who wrongly represents himself as a person authorized to enter a transaction commits an offence.*

*(8) Neither Cabinet, a Minister of Government nor a person directly instructed by either, is authorized to enter a transaction.*

Supplier not to  
enter transaction  
unless with a  
authorized  
purchaser

**10.** (1) A person who is, or intends to be, a supplier *shall ensure that the person with whom he is entering into a transaction or related negotiations is an authorized person.*

*(2) A supplier who is found either by the Procurement Regulator, the Public Procurement Commission or the Court to have recklessly entered, or be entering, a transaction with an unauthorized person shall be prohibited from entering any future transaction with any agency for a period of five years either in*

a personal capacity or in respect of any corporate body *of which that person is a corporate office holder*, in addition to any other penalty.

### ***PART III - PUBLIC PROCUREMENT COMMISSION***

Establishment of  
the Public  
Procurement  
Commission

***11. (11) For the purposes of this Act there is hereby constituted as a standing commission of enquiry a body to be known as the Public Procurement Commission which shall be directly accountable to Parliament.***

***(2) The membership of the Commission shall comprise a full time Chairman, 4 full time Commissioners and 4 part-time Commissioners being persons with a minimum of experience of 10 years in the disciplines of law, accounting and engineering and such other disciplines as the President sees fit, to be appointed by the President in the exercise of his discretion after consultation with the Prime Minister and the Leader of the Opposition;***

***(3) The Chairman of the Commission shall be a retired judge;***

***(4) The terms and conditions of the members of the Commission and other matters pertaining to the operation of the Commission are prescribed in the Second Schedule.***

***(5) The costs incurred for, and in relation to, the performance of the functions of the Commission shall be a direct charge on the Consolidated Fund.***

Functions and  
powers of  
the Commission

***12. (1) The function of the Commission is to investigate and resolve a complaint arising out of public procurement that cannot be resolved by the by the agency in accordance with the Guidelines, whether the complaint is submitted by an aggrieved party or the Commission is acting on its own initiative.***

*(2) In the exercise of its functions the Commission shall expedite issues before it in a timely fashion and take such other steps so as to minimize negative economic impact arising out of the performance of its functions.*

Chapter 19:01

*(3) Subject to the Act, the Commission is deemed to be a commission for the purposes of the Commissions of Enquiry Act and a member of the Commission shall have all the powers of a Commissioner appointed under that Act.*

Chap. 5:32

*(4) The Commission may conduct a mediation in accordance with the Mediation Act.*

Matters pertaining  
To the performance  
of the Commission

**13. (1) Where a transaction arises out of a development project, social or otherwise, valued in excess of \$50 million which is the subject of investigation by the Commission, no less than three (3) of the members of the Commission shall hear the matter**

*(2) The Commission shall not be subject to the direction or control of any other person or authority in the performance of its functions but is directly accountable to Parliament.*

(3) Nothing in subsection (2) shall be construed as preventing the Minister with the responsibility for such aspects of the administration of this Act to make such arrangements as are necessary or desirable to facilitate liaison between Parliament and *the Commission*.

*(4) The Commission* upon hearing the parties to a transaction may direct the suspension of the procurement process pertaining to a transaction pending the outcome of an investigation and in so doing shall provide reasons.

*(5) The Commission* may employ alternative dispute resolution and other mediation techniques in the course of investigating and resolving a complaint.

(6) Subject to sections **14, 15, 16 and 17, the Commission** may regulate its own procedure and confer powers and impose duties on any officer of an agency.

(7) *The Commission* shall, no later than 10 working days following the expiry of the investigation, advise the parties to the transaction of the outcome of the investigation and report accordingly to Parliament.

Instituting  
process to treat  
with a complaint

14. (1) *Subject to the Guidelines* a person who has a complaint that a transaction to which this Act applies is in breach of the Operating Principles and Objectives or the Guidelines, may complain to *the Commission* in writing.

(2) *The Commission* may on its own initiative, or shall as a result of a complaint made under subsection (1), investigate a matter relating to a transaction so as to ensure the integrity of the process applied in the transaction and the application of the Operating Principles, Objectives and Guidelines.

(3) *The Commission may* offer mediation to the parties to a complaint in the first instance.

Procedure of  
Commission

15. (1) *For the purposes of an investigation under this Act, the Commission shall inform itself in such manner as it sees fit.*

*(2) For the purpose of an investigation under this Act, the Commission may-*

(a) by notice in writing, require an agency or any officer or employee of that agency to furnish information that may assist the investigation into a transaction in such manner and at such times as may be specified by the *Commission*;

(b) by notice in writing require any person to provide information, data or reports for or in relation to, a transaction as may be in the possession or under the control of that person.

*(3) The Commission may summon before it and examine on oath -*

*(a) any person who has made representations to it; or*

*(b) any officer, member or employee of a public body or any other person who, in the opinion of the Commission is able to furnish information relating to the investigation.*



*(4) No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he could not be compelled to give or produce in proceedings in any court of law.*

Access to  
property of an  
agency

16. (1) For the purpose of an investigation under this Act the *Commission or a* person authorized by it in writing for that purpose shall have the power to –

- (a) access books, records, documents, stores or other property belonging to an agency whether in the possession of an official or any other person, and make copies accordingly;
- (b) enter premises or a location under the care, control or custody of an agency where the Commission has reason to believe that the books, records, documents or other property pertinent to the investigation may be found;
- (c) enter premises occupied by any person in order to make such enquiries or to inspect a document, record or property that he considers necessary to any matter being investigated by him.

*(2) The Commission or a person authorized by it in writing for that purpose shall only enter premises, other than those belonging to an agency with the consent of the occupier or owner, and where that consent is not forthcoming, may enter after having obtained a warrant to so do.*

*(3) A person, where so directed by the Commission or a person authorized in writing, shall make available copies of books, records or documents including those in digital format as required.*

Witness on oath

*17. The Commission may summon before it and examine on oath -*

- (a) any person who has made representations to it; or*
- (b) any officer, member or employee of an agency or any other person who, in the opinion of the Commissioner is able to furnish information relating to the investigation.*

- Outcome of Investigation
- 18.** (1) Upon the completion of the investigation the Commission may –
- (a) confirm a decision that is satisfactory to all and in compliance with this Act as a result of mediation or arbitration;
  - (b) direct a continuation of the suspension made under section 13(5) pending an appeal to the Court by the parties;
  - (c) find that a transaction has been conducted by an unauthorized purchaser;
  - (d) find the transaction is contrary to the Operating Principles, Objectives or Guidelines;
  - (e) find the complaint to be frivolous and vexatious.

*(2) The Commission in addition to the powers in subsection (1) may refer the matter to an appropriate authority for further action.*

*(3) The Commission shall present a report to Parliament on the outcome of any investigation on any matter pertaining to public procurement or disposal of public property.*

*(4) After conducting an investigation under this Act, a Commission shall, in writing, inform the Chief Executive of the agency concerned and the Minister having responsibility of that agency the result of that investigation and make such recommendations as he considers necessary in respect of the matter which was investigated.*

*(5) Where a report of the Commission reflects adversely upon any person the Commission shall, so far as practicable, inform that person of the substance of the report.*

- Illegal transaction
- 19.** (1) Where, as a consequence of an investigation by *the Commission*, the party to a transaction is found by the *Commission to be* in breach of an Operating Principle, Objectives or Guidelines, the transaction shall be deemed to be *void*.

*(2) The deeming of a transaction to be void shall not preclude the enforcement of remedies by an innocent third party against a party to that transaction.*

Surcharge for  
frivolous complaint

*20. The Commission may surcharge a person instituting a complainant for costs where the complaint is found by the Commission to be frivolous or vexatious.*

Special Report

*21. If a Commission finds, during the course of its investigations or on the conclusion of a hearing that there is evidence of a breach of duty, misconduct or a criminal offence on the part of an officer or member of an agency, it shall refer the matter to the person competent to take disciplinary or other proceedings as may be appropriate against that officer or member, and in all such cases shall submit a special report to Parliament.*

Proceedings not  
to be voided for  
want of form

*22. The proceedings of a Commission shall not be rendered void for want of form.*

#### **PART IV – THE PROCUREMENT REGULATOR**

Appointment of  
the Procurement  
Regulator *by the  
President*

*23. (1) Subject to sub-section 2, 3 and 4 the President acting in his own deliberate discretion shall appoint a person to the office of Procurement Regulator after taking into consideration the advice of Parliament.*

*(2) A person who is an eligible candidate according to the qualifications as advertised by Parliament for the office of Procurement Regulator shall submit his application to a Joint Select Committee appointed by Parliament for the purpose of recruiting the Procurement Regulator.*

*(3) The Joint Select Committee shall conduct public hearings to consider eligible candidates for appointment to the office of Procurement Regulator and submit a list of names to Parliament.*

**(4) Parliament shall consider the list of the names submitted by the Joint Select Committee and together with its recommendations submit a list of names to the President.**

**(5) The terms and conditions in respect of the office of the Procurement Regulator including remuneration, gratuity and pension benefits shall be as determined by the President on the advice of the Joint Select Committee.**

***(6) The Procurement Regulator is deemed to be “a person in public life” for the purpose of the Integrity in Public Life Act 2000 and is directly accountable to Parliament for the performance of his functions and powers.***

(7) The Procurement Regulator shall be appointed on a contract for a term of not less than five (5) years but no more than seven (7) years on terms as determined by the President in the exercise of his own discretion and is eligible for re-appointment for one more consecutive term only.

(8) The President may terminate the appointment of the Procurement Regulator where that person -

- (a) becomes of unsound mind or is incapable of carrying out the duties of the Procurement Regulator;
- (b) has been declared bankrupt;
- (c) is convicted of an offence which brings the office into disrepute;
- (d) is guilty of misconduct in relation to the functions, powers and duties of the Procurement Regulator;
- (e) is absent from three consecutive meetings of the Council except on leave granted by the President;
- (h) fails materially or wilfully to carry out of the duties or functions as required of the Procurement Regulator under this Act.

(9) Where the Procurement Regulator is unable to act by reason of illness or other cause, the President may appoint a person to act in his stead and the person so appointed may complete any unfinished business commenced by the Procurement Regulator.

Establishment of  
the Office of  
Procurement

***24. (1) There shall be established by this Act a statutory authority, headed by the Procurement Regulator, to be known as the Office of the Procurement Regulator, to provide support to the Procurement Regulator in the performance of his functions and powers.***

***(2) The Parliament shall provide the Office of the Procurement Regulator with adequate human, financial and capital resources, for and in relation to the efficient and effective operation of the functions and powers of the Procurement Regulator, including staffing, training and technical support.***

***(3) The parliament shall provide for the costs and expenses to be incurred in the operations of the Office of the Procurement Regulator to be a direct charge on the Consolidated Fund.***

**Functions and Powers**  
of the Procurement  
Regulator

**25. (1) The Procurement Regulator shall have the power to do anything necessary or convenient for performing his functions under this Act, including the power to enter *into* contracts, hire consultants or purchase or lease real *property*.**

***(1) Without limiting the generality of sub-section (1) the Procurement Regulator shall have the power to engage such staff on contract according to terms and conditions as he sees fit and enter such contracts as he deems necessary for the purpose of his functions.***

- (3) The Procurement Regulator has the function of –
- (a) promoting a flexible and responsible system for procurement;
  - (b) developing a streamlined public procurement framework;

- (c) enabling agencies to explore alternative service delivery options *within the context of the Operating Principles, Objectives and Guidelines;*
- (d) providing ‘best practice’ advice in the conduct of procurement including the promotion of electronic transactions;
- (e) implementing a procurement system to foster small and medium enterprises;
- (f) auditing and reviewing the systems of procurement to ensure compliance with the Operating Principles and Objectives.
- (g) monitoring the award and implementation of transactions to ensure compliance with the Operating Principles, Objectives and Guidelines;*
- (h) liaising with the Public Procurement Commission with respect to its powers so as to advise and guide parties to a transaction and the public of current best practice.*

(4) Without limiting the generality of the foregoing, the Procurement Regulator may-

- (a) harmonize policies, systems and practices of agencies **taking into account costs reduction strategies** in relation to public procurement and disposal of public property;
- (b) *review* procurement *practices and delivery systems annually to identify best practices;*
- (c) establish a comprehensive database with information on procurement processes, contract awards and prices and any other information of public interest as the Procurement Regulator determines;
- (d) determine, develop, introduce, maintain and update related system-wide data-bases and technology;
- (e) maintain a Register of Suppliers *in respect of classes of transactions;*

- 
- (f) adopt, adapt and update common specifications, standards and other whole-of-government arrangements for mandatory compliance;
  - (g) promote public understanding of procurement and related processes;
  - (h) in consultation with competent authorities set training standards, competence levels, and certification requirements to promote best practices in procurement;
  - (i) prepare, update and issue authorized versions of Handbooks incorporating standardized bidding documents, procedural forms and attendant documents for use by agencies in public procurement and disposal of public property;
  - (j) ensure that any deviation by agency from the use of the Handbooks, standardized bidding documents, procedural forms, any other attendant documents and standardized contracts, accord with the Operating Principles, Objectives, and Guidelines;
  - (k) foster improvements with the use of technology in public procurement including electronic trading;
  - (l) conduct periodic inspections of the records and proceedings of the procuring and disposing practices of agencies to ensure the application of the operating Principles, Objectives and Guidelines;
  - (m) refer complaints concerning a transaction to the Public Procurement Commission;***
  - (n) institute audits for or in relation to –
    - (i) public procurement or disposal of public property;
    - (ii) the content and conduct of a contract; and
    - (iii) the conduct of a transaction;
  - (o) heighten the awareness of agencies and members of the public to issues of public procurement;***
  - (p) establish and maintain institutional linkages with professional entities and other bodies with interest in public procurement and disposal of public property, particularly the Public Procurement Commission;***
-

- (q) undertake research and surveys with respect to public procurement and disposal of public property; and
- (r) under take any other activity that may be necessary for the implementation of the Operating Principles, Objectives and Guidelines.

(5) In the exercise of his functions the Procurement Regulator shall not be subject to the direction or control of any person or authority.

*(6) In the exercise of his functions, the Procurement Regulator may request an agency for details in respect of a transaction, and the agency shall comply with that request within the time specified in the request.*

*(7) Where a person fails to comply with such request within the time specified in that request, that person is guilty of an offence.*

Expenses of the  
**Procurement**  
Regulator

*26. (1) The Parliament shall provide for the cost and expenses of the Procurement Regulator to be a direct charge on the Consolidated Fund.*

Audit of the  
Procurement  
Regulator

*27.* The Auditor General shall audit the Procurement Regulator annually and submit the report to Parliament.

Reporting by the  
Procurement  
Regulator to  
Parliament

*28.* (1) The Procurement Regulator shall present an annual report to Parliament no later than forty (40) days after the expiry of the financial year to which that report relates.

(2) The report shall include-

- (a) a figure representing the total value of contracts as awarded by agencies, *and another figure representing* the cost of the total value of contract overruns;



- (b) the number of unfulfilled contracts awarded by agencies in respect of procurement;
- (c) the means of financing the contracts;
- (d) the number of variations to a contract and related costs;
- (e) a summary of transactions on an agency by agency basis specifying in respect of public procurement-
  - (i) the number of contracts awarded;
  - (ii) the means of funding the contracts together with quantum;
  - (iii) the number of contracts varied;
  - (iv) the number of contracts with cost overruns;
  - (v) the quantum of those overruns;
  - (vi) the number of unfulfilled contracts and the quantum of cost incurred;
  - (vii) with respect to the procurement for a project, the expected deliverables of that project, the number and value of the contracts involved and a list of the successful awardees with respect to contracts issued in relation to the project together with a brief description of each contract;
  - (viii) lessons learnt as a consequence of the management contracts;
- (f) a summary of transactions concerning the disposal of public property on an agency by agency basis -
  - (i) in respect of real property – the address and other identifying details of the property disposed of including value, to whom it was disposed, date of disposal, means of disposal, and consideration;
  - (ii) *in respect of property other than real property, details of the property disposed of including value, to whom it was disposed, means of disposal, and consideration;*
- (g) details of changes implemented to ensure current best practice for procurement, and disposal of public property;
- (h) the contents of the report of the Council;
- (i) recommendations.

*(3) The report does not need to include details of contracts less than \$50,000 or contracts for the settlement of legal liability other than the total number and quantum.*

(4) The Speaker shall cause a copy of that report to be laid before Parliament within twenty-eight (28) days of its receipt by him, or if Parliament is not then in session, within twenty-eight (28) days of the commencement of its next session.

## **PART V - NATIONAL PROCUREMENT ADVISORY COUNCIL**

National  
Procurement  
Advisory Council

**29.** (1) There shall be established a National Procurement Advisory Council comprising fourteen (14) persons being -

*(a) a nominee of the Trinidad and Tobago Transparency Institute and one nominee from each of two (2) other civil society organizations established under law having an interest in good governance;*

*(b) two nominees of the Joint Consultative Council for the Construction Industry and one each from the Trinidad and Tobago Manufacturers' Association, the Trinidad and Tobago Chamber of Industry and Commerce and the Energy Chamber;*

(c) a nominee *from an organization representing labour and one representing a professional organization;*

*(d) a nominee of the Tobago House of Assembly;*

(e) a nominee of a body that represents the State enterprises other than the Corporation Sole;

(f) the Chief State Solicitor; and

(g) an *ex-officio* member from the Ministry of Finance.

(2) A nominating organization referred to in sub-section (1) *other than that which is specified*, shall be appointed for a period of three years by the President

exercising his own discretion after taking into account the effectiveness of that organization in serving the public interest, which organization shall nominate its representative to serve on the Council.

(3) Should a nominating organization cease to exist, the President may identify an alternative organization for the balance of the term of the organization being replaced, and the nominee's term on the Council shall be affected accordingly.

(4) An organization within five (5) working days of being appointed by the President shall advise the Procurement Regulator in writing of its nominee to the Council being selected by the President.

(5) The Procurement Regulator shall advise the public of the nominees by a notice in the Gazette and in a major circulating daily newspaper.

(6) Matters pertaining to the operation of the Council are prescribed in the **Third** Schedule.

(7) The Council shall present an annual report to the Procurement Regulator and include in that report its observations and recommendations on the operation of the systems pertaining to public procurement, and disposal of public property.

Functions and  
powers of the  
National  
Procurement  
Advisory Council

**30.** (1) The Council shall meet –

(a) to consider the implementation of the Operating Principles and Objectives, and to advise the Procurement Regulator accordingly;

(b) to make recommendations to the Procurement Regulator for the development of the Guidelines so as to ensure that the Guidelines and other matters in relation to public procurement, and disposal of public property, conform to the Operating Principles and Objectives.

(2) In performing its functions under subsection (1), the Council shall take all reasonable steps to obtain the views of the national community on the operation of the public procurement system *and take into account Government procurement policy for local suppliers and small businesses.*

(3) The Council may invite a representative of an agency to assist in the performance of its functions but the representative shall have no vote.

Secretariat services  
to be provided by  
the Procurement  
Regulator

**31.** The Procurement Regulator shall provide the necessary secretariat services to the Council and bear the cost for the operation of the Council.

#### PART VI – MISCELLANEOUS

Protection from  
liability

**32.** *Subject to section 37, no proceedings whatsoever shall lie against a Commission or any person concerned with the administration of this Act for anything that he may do or report or say in the performance of its functions and powers under this Act.*

Privileged  
information and  
protection from  
defamation

**33. (1)** *Anything said or information supplied or any document or thing produced by any person in proceedings before a Commission or in the course of any investigation by the Commission shall be absolutely privileged in the same manner as if the proceedings or investigations were in a court of law.*

**(2)** *For the purposes of defamation proceedings any report made by a Commission or the Procurement Regulator under this Act and any fair and accurate comment concerning that report shall be deemed to be privileged.*

Procurement  
records to be public

**34. (1)** A person may make a request of an agency to supply information and documents relating to a transaction.

(2) The Freedom of Information Act, 1999 applies to a request under subsection (1) as if that request had been made under the Freedom of Information Act, 1999.

(3) An agency shall not withhold disclosure on the grounds of confidentiality because that disclosure may prove embarrassing to the agency.

Agencies to publish  
award of contracts

**35.** Where an agency awards a contract, the authorized officer of that agency shall cause the public to be advised of that award, the names of the parties, the property or services to be acquired or disposed of, the price, and the performance date of the contract contemporaneously with the making of the award, and the requirements shall apply in respect of any variation of that contract or award.

Application of  
Judicial Review  
Act, 2000

**36.** Notwithstanding any other law, the Judicial Review Act, 2000 applies to a decision which arises in the process of procurement in respect of a transaction by an agency.

Reporting on  
Collusion

**37.** (1) Notwithstanding any other written law, where a person has a reasonable belief that collusion between all or any of the interested parties to a transaction, or reasonably believes that an irregularity or a breach of this Act, has occurred, that person shall report accordingly to the Procurement Regulator, or the Public Procurement Commission.

(2) The Procurement Regulator shall refer any report of a breach of this Act to the relevant authorities and to the Public Procurement Commission for prompt attention, and advise accordingly in his report to Parliament.

Offences

**38.** (1) A person who exercises undue influence which results in a transaction being in breach of the Operating Principles, Objectives or Guidelines commits an offence.

(2) A person who being or having been an officer of an agency -

- (a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or
- (b) is in control of financial resources or property disproportionate to his present or past official emoluments, *and*, unless he gives a satisfactory explanation to the Court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control; commits an offence.

(3) Where a Court is satisfied in proceedings incurring subsection (2) that, having regard to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for, or otherwise on behalf of, the accused or acquired such resources or property as a gift from the accused, those resources or property shall, until the contrary is proved, be presumed to have been in the control of the accused.

General penalty

**39.** (1) A person who commits an offence under this Act for which no penalty is prescribed shall be liable to a fine of five hundred thousand dollars and imprisonment for seven (7) years.

(2) An offence attracting a penalty under subsection (1) is a "specified offence" for the purpose and application of the Proceeds of Crime Act, 2000.

Protection for  
whistleblowers

**40. (1) *Notwithstanding any other law, a person shall not be discharged, demoted, suspended, threatened, harassed, or financially prejudiced or otherwise discriminated against for making a report under section 38.***

***(2) A person who is discharged, demoted, suspended, threatened, harassed or financially prejudice or otherwise discriminated against for making a report under section 38 shall be reinstated in his original office with no loss of benefit and provided with a public apology by the agency without prejudice to other***

*legal recourse available to him.*

*(3) A person who acting on behalf of an agency discharges, demotes, suspends, threatens, harasses or in any manner discriminates against a person or acts so as to prejudicially impact upon a person's livelihood as a consequence of his making a report under section 38 commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars (\$150,000) and imprisonment for six (6) months.*

- Amendment to Act **41.** A law altering sections 4, 5, 6, 7, 8, 9, and 10 of this Act shall not be passed by Parliament unless the final vote is supported by the votes of not less than two-thirds of the members of each House.
- Regulations **42.** The President may make regulations for the giving effect of this Act, and for prescribing anything required or authorized by this Act to be prescribed.
- Validation of transactions by agencies outside the jurisdiction of Central Tenders Board Ordinance 1961 **43.** A transaction that is a transaction to which the Central Tenders Board Ordinance, 1961 does not apply and which is entered into or in force in accordance with an agency's tendering rules and procedures at the commencement of this Act, shall be deemed to be performed in accordance with this Act, and to the extent that the transaction is valid at the commencement of the Act, it shall be deemed to be so valid for the purposes of this Act so long as it conforms to section 4 of this Act.
- Repeal and savings of transaction within the jurisdiction of the Central Tenders Board Ordinance 1961 **44.** (1) The Central Tenders Board Ordinance, 1961 is repealed.
- (2) At the commencement of this Act a transaction that is entered into by the Director of Contracts, the Central Tenders Board or by any person in accordance with the Central Tenders Board Ordinance, 1961, for or on behalf of an agency shall be deemed to have been entered in accordance with this Act with respect to that agency *and a reference to the Director of Contracts, the Central*

*Tenders Board as the Central Tenders Board Ordinance 1961, as the case may be, shall be construed as a reference to the Procurement Regulator or this Act as the context demands.*

(3) Notwithstanding the repeal of the Central Tenders Board Ordinance, 1961, the Central Tenders Board Regulations 1965 and the Central Tenders Board (Defence Force and Protective Services) (No 2) Order 1992 shall continue to be in effect and shall apply, as appropriate to a transaction to which the Central Tenders Board Ordinance, 1961 applied prior to the commencement of this Act, until such time as the Guidelines are in force.

Consequential  
Amendments to  
the Exchequer  
and Audit Act

**45.** The Exchequer and Audit Act is amended in section 2 by -

(a) adding at the end of the definition of “public money”

“(c) spent or committed for expenditure by or on behalf of an Chap. 69:01  
accounting officer or a statutory body;

(d) distributed or administered by or on behalf of an accounting  
officer to a person.”

(b) by adding at the end of the definition of “revenue” the following

**words:**

“received or receivable by an accounting officer or raised by an  
instrument that is issued by or on behalf of the State from which it  
can be inferred that the State accepts liability in the case of  
default”;

(c) by deleting from the definition of “statutory body” **the following**

**words:**

“or similar body corporate established and incorporated by an act”  
and substituting the words “established by an act or body corporate  
that is established by under an act including the Companies Act  
where the Government or any person controlled by the  
Government is entitled to exercise control directly or indirectly  
over the affairs of that body”. Section 11(3)



**FIRST SCHEDULE****(Section 5)*****Framework for the Establishment of Procurement Guidelines***

***1. The Objectives of Public Procurement include the promotion of economy, efficiency and competition in public procurement and in the disposal of public property in accordance with the Operating Principles of Accountability, Transparency and Value for Money. These objectives are more readily achievable when procurement is-***

***(a) perceived as a knowledge-based management activity geared to enhancing good governance by linking the financial system to economic and social outputs and outcomes;***

***(b) managed in such a manner that inputs, outputs and related methods adhere to best practice.***

***2. Guidelines, Agency Handbooks and Agency Instructions must apply-***

***a) standards for public contracting as recommended by Transparency International (see Appendix 1);***

***b) Methodologies for optimising Value for Money and apply on a whole of life basis to achieve stated economic and social outputs reflecting the principles of Transparency and Accountability.***

***3. Value for Money methodologies require:-***

***(a) Identification of needs and of economic and social outputs and outcomes; specification in these terms facilitates cost benefit analysis: the proper identification, assessment and comparison of the costs and benefits at each phase of the procurement cycle.***

***(b) Planning, including the selection of an appropriate procurement method and of evaluation criteria, taking into account:***

- i. government and agency policies;*
  - ii. market maturity;*
  - iii. the need to implement a competitive process of a scale commensurate with the size and risk profile of the particular procurement;*
  - iv. admission requirements for tenderers;*
  
  - v. the performance history of each tenderer;*
  
  - vi. the requirement that the procurement contract promote stated social and economic outputs and outcomes.*
- (c) Disposal of assets in accordance with best practice, accountability and transparency principles.*
- 4. Guidelines, Agency Handbooks and Agency Instructions shall apply accountability and transparency criteria to all stages of the procurement cycle.*
- The application of these criteria should identify performance indicators that include:*
- (a) the extent to which the procurement process to be undertaken-*
    - i. optimizes value for money in accordance with the economic and social outputs and outcomes of the agency;*
    - ii. protects the agency's integrity in the use of public money.*
  
  - (b) What social and economic outputs and outcomes to be achieved through the procurement process using the value for money methodologies.*
- 5) Agencies through their Chief Executives are accountable for their procurement processes. Accountability and transparency are best achieved by ensuring that an agency's procurement procedures are clear, well understood, open applied equitably and adhere to best practice in accordance with the agency's policies and objectives. The procedures must be documented and published thereby enabling third party verification.*

- 6) *Guidelines, Agency Handbooks and Agency Instructions shall foster the achievement of economic and social outputs and outcomes in accordance with Government policy decisions, particularly those relating to national industry, promotion of small and medium-sized enterprises and of local content, sustainable development, poverty alleviation and environmental management.*
- 7) *An agency's performance in meeting accountability and transparency criteria should form part of the Procurement Regulator's report to Parliament and be published on the agency's website.*

## *SECOND SCHEDULE*

*(Section 11)*

*Matters pertaining to the operation, and terms and conditions of the members, of the Public Procurement Commission.*

Period of  
Appointment

1. *(1) Subject to this Act, a person appointed as a member of the Commission shall hold office for a period of seven (7) years and may be re-appointed for period not exceeding five (5) years but shall not be appointed for more than two (2) consecutive terms.*

*(2) A member of the Commission is deemed to be a person in public life for the purpose of the Integrity in Public Life Act, 2000 and is directly accountable to Parliament for the performance of his functions and powers.*

Remuneration of  
members of the  
Commission

2. *(1) Subject to subsection (2), a member of the Commission shall receive such emoluments and be subject to such other terms and conditions of service as the President may from time to time determine.*

*(2) The emoluments and terms of conditions of a member of the Commission shall not be less than the emoluments which may, from time to time, be payable to a Puisne Judge.*

*(3) The emoluments and terms and conditions of service of a member of the Commission, other than allowances that are not taken into account in computing pensions, shall not be altered to his disadvantage during the period of his appointment or reappointment, as the case may be.*

Voluntary  
departure from  
office

*3. A person appointed as a member of the Commission may at his own request be relieved of office by the President and shall in any case, subject to Clause 4, vacate office on attaining the age of seventy (70) years.*

Extension of  
in limited  
circumstances

*4. (1) The President may, after consultation with the Prime Minister and the Leader of the Opposition, permit a member of the Commission to continue in office until he has attained a later age, but not exceeding seventy-five (75) years.*

*(2) Notwithstanding that he has attained the age at which he is required to vacate his office, a member of the Commission may continue in office for such period after attaining that age as the President after consultation with the Prime Minister and the Leader of the Opposition, may specify, so that the member can give his decision or conclude any investigation he was conducting before he attained that age.*

Validation of  
action of member

*5. Nothing done by a member of the Commission shall be invalid by reason only that he has attained the age at which he required to vacate his office.*

Removal of  
member of the  
Commission

*6. (1) A member of the Commission may be removed from office for –*

*(a) inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause);*

*(b) trading with the Government of Trinidad and Tobago without the prior approval by resolution of each House of Parliament;*

*(c) bringing the office into disrepute;  
and shall not be so removed except in accordance with this provision.*

*(2) For the purposes of this clause a Commissioner trades with “the Government of Trinidad and Tobago” if, while holding office as such, he becomes a party to, or is a partner in a firm or a director or manager of a company which to his knowledge becomes a party to, any transaction with the Government of Trinidad and Tobago.*

*(3) If each House of Parliament by resolution decides that the question of removing a person from the Commission ought to be investigated, then the President shall appoint a disciplinary tribunal, which shall comprise a Chairman and not less than two or more than five other members from among persons who hold or have held the office of Judge of a superior court having jurisdiction in civil and criminal matters or a court having jurisdiction in appeals from any such court.*

*(4) The disciplinary tribunal shall enquire into the matter and report on the facts to the President and recommend whether the member of the Commission the subject of the enquiry, ought to be removed from office for the grounds specified in this clause, within three (3) months of being appointed under sub clause (3).*

*(5) If the question of the removal from office of a member of the Commission has been referred to a tribunal appointed under sub clause (3) and the tribunal has recommended to the President that the person appointed as a member of the Commission should be removed from office, the President shall, remove that person from office.*

*(3) The appointment of a member of the Commission and the termination of his appointment whether by death, resignation or otherwise shall be published in the Gazette.*

Suspension of  
member

*7. Where the question of removing a member of the Commission from office has been referred to a tribunal the President, after consulting with the Prime*

*Minister and the Leader of the Opposition, may suspend him from performing the functions of his office and any such suspension may at any time be revoked by the President after consultation with the Prime Minister and the Leader of the Opposition and shall in any case cease to have effect if the tribunal advises the President that the person ought not be removed from office.*

Disqualification of  
member of Commission

*8. (1) No person shall be appointed as a member of the Commission if he is-*

- (a) a member of the Senate or of the House of Representatives,*
- (b) an undischarged bankrupt;*
- (c) has been convicted of any offence involving dishonesty or moral turpitude; or*
- (d) a partner in a firm, or a director or manager of a company which to his knowledge is a party to any transaction with the Government of Trinidad and Tobago, unless, prior to his appointment, he has disclosed the nature of that transaction and interest of such firm or company.*

Member to be  
full time

*9. A person appointed as a full time member of the Commission shall devote his time to the appointment and shall not accept paid employment in any other capacity during any period in which he holds office and a person appointed as a part-time member of the Commission shall devote his full time to the performance of his duties when acting as a Commissioner.*

Vacancy to be  
filled

*10. (1) Where a vacancy arises in the membership of the Commission the President, after consultation with the Prime Minister and the Leader of the Opposition, may designate one of the part-time members of the Commission to act in that office during that vacancy, until an appointment is made by the President.*

*(2) Where, by reason of illness, absence from the jurisdiction or other sufficient cause a person appointed as a member of the Commission is unable*

*to perform the functions of his office, the President after consultation with the Prime Minister and the Leader of the Opposition, may appoint a part-time Commissioner as he thinks fit, being a person qualified under this Act, to perform those functions as a replacement.*

Staff of  
Commission

*11. (1) The Commission may appoint and employ persons as are necessary to assist it in the proper performance of its function, at such remuneration, terms and conditions as may be approved by the Commission.*

### **THIRD SCHEDULE**

#### **Section 29 (1) (6)**

#### ***Matters pertaining to the operation of the National Procurement Advisory Council***

Tenure of office

1. (1) An organization that is represented on the Council may through its nominee hold an office for a period of three (3) years and the organization is eligible for re-appointment for no more than two (2) consecutive terms

(2) The organization may change its nominee after giving notice to the President and the Procurement Regulator.

Council vacancy

2. (1) The office of a member of the Council shall become vacant –

(a) if he resigns in writing;

(b) if his appointment is terminated in accordance with this Schedule.

(2) If any vacancy occurs in the membership of the Council, that vacancy shall be filled by another nominee of the relevant organization who shall, subject to this Schedule, hold office for the remainder of the period for which the previous member was appointed, and the consequent appointment shall be made in the manner and from the same category of persons as the appointment of the previous member.

- Gazetting of appointments 3. The names of all the members of the Council as first constituted and every change of membership following shall be published in the *Gazette*.
- Resignation from office 4. A member of the Council may at any time resign his office by instrument in writing addressed to the President and transmitted through the Chairman, and from the date of the receipt by the President of that instrument, the member shall cease to hold office.
- Termination of appointment 5. The membership of a person to the Council shall cease if –
- i. the nominating organization withdraws support from the person who is its nominee on the Council;
  - ii. the nominating organization becomes bankrupt or compounds with or suspends payment to a creditor;
  - iii. the President revokes the organization as a nominating body, which the person represents.
  - iv. that person becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
  - v. that person is convicted of an offence and sentenced to a term of imprisonment;
  - vi. that person dies.
- Procedure of meetings 6. (1) The Council shall meet not less than once a month or as often as may be necessary or expedient for the performance of its functions under this Act and these meetings may be held at such places and times and on such days as the Council determines.
1. The Council shall appoint one of its members as Chairman.
  2. The Chairman shall preside at all meetings of the Council and if the Chairman is absent from a meeting the members present shall elect another member to preside at that meeting.
  3. Five members shall constitute a quorum of the Council.
  4. The decisions of the Council shall be by a majority of votes and in addition to an original Vote, the Chairman or other member presiding



at the meeting shall have a casting vote in any case in which the voting is equal.

- 5. Subject to the provision of this Act the Council may regulate its own proceedings
- 6. The validity of any proceedings of the Council shall not be affected by any vacancy among the members or by any defect in the appointment of a member.

Remuneration of members

7. There shall be paid to the members of the Council such remuneration, whether by way of salary, honorarium, travelling or other allowances as the Cabinet determines.

Passed in the House of Representative this .....day of .....2012

*Clerk of the House*

I confirm the above

*Speaker of the House of Representative*

Passed in the Senate this .....day of .....2012

*Clerk of the House*

I confirm the above

*President of the Senate*

July 05 2012 – Public Procurement and Disposal of Public Property Act, 2012

This document is a draft only and thus may contain typographical errors. Should you locate such an error please forward same to us via email – [jcctt1@gmail.com](mailto:jcctt1@gmail.com). Other comments are also welcome.



**JOINT CONSULTATIVE COUNCIL  
FOR THE CONSTRUCTION INDUSTRY**

The Professional Centre Bldg., 1<sup>st</sup> Floor Unit B202,  
11-13 Fitzblackman Drive, Wrightson Rd. Ext.,  
Port of Spain, Trinidad and Tobago.

E-mail: [jcctl1@gmail.com](mailto:jcctl1@gmail.com)

Website: <http://www.jcc.org.tt>

Tel: (868) 623-9396

Fax: (868) 623-2949

**PRESS RELEASE: For Immediate Release**

Contact: Desiree Arthur-Lopez [jcctl1@gmail.com](mailto:jcctl1@gmail.com) (868) 623-9396

**November 17, 2011 – Port of Spain, TT—  
JCC Press Briefing on PUBLIC PROCUREMENT**

Welcome to Members of the Media attending this important briefing.

Let me introduce our colleagues –

The Peoples' Partnership's [manifesto](#), at page 18, commits to –

**Procurement**

- *Prioritise the passing of procurement legislation and appropriate rules and regulations*
- *Establish equitable arrangements for an efficient procurement system ensuring transparency and accountability by all government departments and state enterprises...*

The Public Procurement legislative process has paused, with the work of the original Joint Select Committee of Parliament having been preserved for a new JSC to take over in this session.

We were advised that the new JSC is to be appointed shortly to complete the work of the original Committee and we would like to note for the record that our Private Sector/Civil Society group stands ready to resume work on this.

Our group comprises

- The JCC
- Trinidad & Tobago Chamber of Industry & Commerce
- Trinidad & Tobago Manufacturers' Association
- Trinidad & Tobago Transparency Institute

As such, we are the leading Private Sector/Civil Society stakeholders with the intention of our proposals being to promote Transparency, Accountability and Value-for-Money in the expenditure of Public Money.

The new Public Procurement systems we are proposing will enhance competition, reduce political interference in the award of contracts and act as an effective anti-corruption measure. All of those objectives will be of great benefit to our nation, particularly the silent majority, by which we are referring to the unborn citizens of the future.



**JOINT CONSULTATIVE COUNCIL  
FOR THE CONSTRUCTION INDUSTRY**

The Professional Centre Bldg., 1<sup>st</sup> Floor Unit B202,  
11-13 Fitzblackman Drive, Wrightson Rd. Ext.,  
Port of Spain, Trinidad and Tobago.

E-mail: [jcctt1@gmail.com](mailto:jcctt1@gmail.com)

Website: <http://www.jcc.org.tt>

Tel: (868) 623-9396

Fax: (868) 623-2949

Our position on the legislative process is that, given the far-reaching consequences of these proposals, the government must publish the draft legislation for public comment before the matter is debated in Parliament. One of our greatest concerns on this Public Procurement matter is with respect to the Uff Report. The Minister of Justice is responsible for the implementation of the 91 recommendations in the Uff Report and JCC has written to Minister Volney on three occasions to offer our assistance in any working group that Ministry might have established. We have never had a reply, but we will continue to insist that the Uff Enquiry has to have a meaning for the progress of our nation and that has to mean that its recommendations are implemented.

As an active part of the drive for new, effective Public Procurement systems, we also have serious, shared concerns on the Invader's Bay situation and those are highlighted at <http://www.jcc.org.tt/invadersbay.htm>. We have all written to the Minister of Planning & the Economy to state our objections and all attended a meeting with Minister Dr. Bhoë Tewarie and Minister Stephen Cadiz on 26th September. We note that our concerns have not been addressed and that the said Minister is reported to have said that "*...The winning proposal for the Invaders Bay development project will be revealed within two weeks...*"

The lack of a proper Needs Assessment is a glaring omission in this Invader's Bay matter, as a result of which there were no clear rules for project evaluation at the time the RFP was published. When we asked the Ministers during our meeting, we were told that those evaluation rules would be finalised after the submissions were received. We regard that as completely unacceptable in terms of transparency and proper process in tendering.

Related to that is the fact that the RFP issued by MPE is itself silent as to the existing three strategic plans for the Port-of-Spain area, such that this would appear to be taking place without proper context. There needs to be wide public consultation on this proposed development if proper levels of transparency and participation are to be achieved.

There is also the issue of the urgent need to diversify our economy, so that we can develop non-energy sources of foreign exchange earnings. This proposed development is an excellent opportunity to address that issue of foreign exchange leakage during the construction and operation phases.



**JOINT CONSULTATIVE COUNCIL  
FOR THE CONSTRUCTION INDUSTRY**

The Professional Centre Bldg., 1<sup>st</sup> Floor Unit B202,  
11-13 Fitzblackman Drive, Wrightson Rd. Ext.,  
Port of Spain, Trinidad and Tobago.

E-mail: [jcctt1@gmail.com](mailto:jcctt1@gmail.com)

Website: <http://www.jcc.org.tt>

Tel: (868) 623-9396

Fax: (868) 623-2949

We offered MPE to revise the RFP, so as to conform with their 12-month deadline for start-on-site, but they refused this.

The approach being taken on Invader's Bay to date represents a continuation of the old, which makes it effectively a breach of trust and promise to the national community.

We once again urge the MPE to take the opportunity to withdraw this RFP and revise the process.

Thank you, we will take questions now...

**SUBMISSION**

**on**

**LEGISLATIVE PROPOSALS ON PUBLIC  
PROCUREMENT REFORM**

**laid in Parliament on 29 October, 2010**

**Submitted to a Joint Select Committee of  
Parliament**

**by the**

**JOINT CONSULTATIVE COUNCIL FOR THE  
CONSTRUCTION INDUSTRY**

**TRINIDAD AND TOBAGO TRANSPARENCY  
INSTITUTE**

**TRINIDAD & TOBAGO CHAMBER OF INDUSTRY AND  
COMMERCE**

**TRINIDAD AND TOBAGO MANUFACTURERS  
ASSOCIATION**

**22<sup>ND</sup> DECEMBER, 2010**

**INTRODUCTORY NOTE**

1) **A Joint Select Committee of Parliament (JSC) was appointed on the 29 October, 2010 to consider:**

a) ***A Legislative Proposal to provide for Public Procurement and the Disposal of Public Property***

**This is in effect the text of a draft Procurement and Disposal of Public Property Bill 2006 that was produced as part of the procurement reform process initiated by Government following the laying in Parliament in September 2005 of the *White Paper on the Reform of the Public Sector Procurement Regime*<sup>1</sup>. The signatories to the White paper were also responsible for the preparation of this draft bill as part of a Cabinet Appointed Committee chaired by the then Permanent Secretary in the Ministry of Finance, Kamal Mankee.**

b) ***A Legislative Proposal to repeal and replace the Central Tenders Board Act.***

c) **This document, which was prepared in 1997 by the then Attorney General, Ramesh Lawrence Maharaj, is the text of *The National Tenders Board Bill, 1997* which sought to repeal and replace the Central Tenders Board Act and establish a National Tenders Board for the Government and certain statutory bodies and a Parliamentary Commission to monitor its activities.**

**The JSC is charged with reporting to Parliament with recommendations for new procurement legislation on the basis of these proposals.**

2) ***This submission is intended to assist the JSC by providing stakeholder inputs.***

**It takes the form of suggested amendments/additions to the text of the 2006 draft Bill taking into account elements of the 1997 Tenders Board Bill as well as developments since the policy statement of the White Paper from which the 2006 draft Bill evolved.**

**The amended text is submitted as a *Draft Public Procurement and Disposal of Public Property Bill, 2011.***

3) **This submission reflects our endorsement of the *White Paper* with two (2) material differences, which are:-**

(a) ***The separation of investigatory powers from regulatory powers* which, in the 2006 Bill, are functions of the proposed Procurement Regulator who reports only to Parliament.**

---

<sup>1</sup> Available at: <http://www.google.tt/url?sa=t&source=web&cd=1&ved=0CUBUQFjAA&url=http%3A%2F%2Fwww.finance.gov.tt%2Fcontent%2Fpub50.pdf&ei=wbL6TPnjOIGC8gai9rH7Cg&usq=AFQjCNFgFkhkWkKheA8rPIZAcClrhfJ6vw>

In the 2011 draft Bill it is proposed that the investigatory powers reside with the *Public Procurement Commission*, a Standing Commission of Enquiry established to monitor the procurement process and deal with grievances arising out of the procurement process. This body too reports only to Parliament.

This accords with best practice and addresses concerns expressed in the *Uff Commission of Enquiry*. In addition, the 2011 Bill follows a similar separation of the investigatory from the regulatory function that was proposed in the *1997 National Tenders Board Bill*.

It also reflects a feature of the relevant *Jamaican legislation* in which The Contractor General Act 1985 was amended in 1999 so as to provide the Contractor General with the power to investigate any Government contract or grant, or issue any prescribed licence, while leaving to the National Contracts Commission the largely regulatory role of the granting and implementation of Government contracts.

(b) In comparison with the White Paper and the 2006 draft Bill, this document provides for greater support for the proposed Procurement Regulator by *amplifying the role and composition of the National Procurement Advisory Council* and *establishing the organizational support of his Office* as a direct charge on the Consolidated Fund.

**4) The text of our proposed draft Bill follows.**



***BILL FOR******AN ACT******PUBLIC PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY BILL, 2011*****EXPLANATORY NOTE**

(These notes form no part of the Bill, but are intended only to indicate its general purport).

**Background**

*The purpose of this Bill is to provide the legal and regulatory framework to implement the Policy on Procurement Reform as contained in the White Paper entitled “Reform of the Public Sector Procurement Regime” (the White Paper), tabled in Parliament on 26 September 2005. This White Paper.*

*The intent is to maximize economy and efficiency in public expenditure in the area of procurement in accordance with the principle of accountability, transparency and value for money thereby increasing public confidence in the quality of governance. It does so by prescribing the legal and regulatory framework recommended in the White Paper entitled “The Reform of the Public Sector Procurement Regime” which was tabled in Parliament on 26 September 2005 by the Government.*

*The Bill reflects the assumption that expenditure involving public money triggers a prime responsibility of the purchaser who uses public funds for a transaction to ensure that the people get value. The Bill does not inhibit the common law doctrines in relation to contract nor specify a rigid process. Rather, it establishes the overarching legal framework founded on principles of public law in which contractual rights will operate. It enables customizing and responsibility of the procurement process to reside with agencies while identifying key points in the procurement system to which all agencies must adhere. The relevant design and*

*monitoring of the procurement system within the specified parameters of the principles of accountability, transparency and value for money is the function of an independent Procurement Regulator.*

*This Bill therefore heralds the Government's stated intention to strengthen the quality of governance by promoting these principles of good governance by systemic re-engineering of the public financial management system. This Bill is thus one of a raft of relevant Bills for the re-engineering of the public financial management system.*

*This Bill, although it stands alone, should form part of a total legislative financial management reform package comprising:*

- (a) a National Audit Office of Trinidad and Tobago Bill;*
- (b) a Financial Management and Accountability Bill which should be presented to the Parliament pending the acquisition of an Integrated Financial Management Information System and the implementation of output based budgeting as signalled by the Government in the Social Economic Policy Frameworks, 2004 – 2006 and 2006 – 2008.*

*Critical to the proposed new procurement regime is a clear understanding of the concept of 'public money'. This encompasses –*

- all money received or receivable by an agency regardless of source;*
- all money received by a non-public body from an agency.*

*The legal framework will embrace expenditure by an agency which is essentially an organisation using public money for a public purpose –*

- a public organization even if for a private purpose;*
- a private organization for a public purpose regardless of the source or type of funding if it can be identified that the State is ultimately liable.*

*The test therefore is not the mode of the incorporation of the body but the ultimate financial responsibility of the State.*

*The Bill also addresses the recommendations of the report of the Commission of Enquiry into the Construction Sector chaired by Professor John Uff, published in March 2010 that, inter alia, specified the need for a clear dispute resolution system which, in this Bill, is the function of the Public Procurement Commission.*

### *Brief Description of Bill*

The crux of the *Bill* is the mandatory compliance with *the Operating Principles, Objectives and Guidelines by all parties to transactions related to the procurement of property, services involving public money and the disposal of public property. The details of the procurement process will in general terms be dealt with in the Guidelines whilst the customized details in respect of an agency will be found in Agency Handbooks. All documents are to be publicly available.*

*The responsibility for the effective operation of the overarching system will reside in an independent Procurement Regulator who directly accounts to Parliament while the accountability for the actual acquisition of property and services and the disposal of property acquired with public money will reside with the agencies.*

*The Bill requires that all parties to a transaction involving public money for the acquisition of property and services or the disposal of public property will need to ensure that their conduct, processes and documentation conform to;–*

- *Economy, efficiency and competition;*
- Ethics and fair dealing according to the highest standards of *probity* and professionalism;
- Promotion of national industry in a manner that conforms to the international obligations of Trinidad and Tobago; and
- *Sustainable development taking into account the Social return on investment.*

*The Operating Principles and the Objectives will inform the National Procurement Guidelines which, in turn, will inform the content of Handbooks for various categories of transaction which are to be prepared by the agency.*

*The Guidelines will be developed by the Procurement Regulator in consultation with the National Procurement Advisory Council. The Council will comprise a total of fourteen (14) persons including representatives of private sector organizations, of those organizations appointed by the President to represent civil society, and representatives from the public sector including the Ministry of Finance and the Tobago House of Assembly.*

*The Bill also provides for a Public Procurement Commission to treat with irregularities and complaints of non-compliance with the Operating Principles, Objectives and Guidelines. The members of the Commission are to be appointed by the President and are answerable to Parliament.*

*Apart from the accountability framework the Bill also prescribes penalties for non-compliance with the Operating Principles, Objectives and Guidelines: a fine of \$500,000 and imprisonment for seven (7) years where no other sanction is prescribed. As these penalties indicate an indictable offence, the Bill ensures the applicability of the Proceeds of Crimes Act, 2000. This may be used by the State for the tracing of assets to reclaim public money in the event that there is a breach of the Act.*

*Where a transaction is found either by a court or by the Public Procurement Commission to be in breach of the Act it is prescribed to be illegal – the common law result of a contract in breach of public policy.*

*For the purpose of operational flexibility for the local conditions and to take into account the culture of an agency, the Bill enables the Chief Executives of agencies (which include ministries and departments, statutory bodies and their subsidiaries, state controlled enterprises and their subsidiaries) to issue instructions to treat with the procuring procedures of their respective agencies. These Agency Instructions are to be complied with by all parties to a transaction so long as they do not breach the Operating Principles, Objectives and Guidelines and will include details of the authorized purchasing officers and purchasing responsibilities, including the quanta of their purchasing limits.*

*Apart from the Guidelines and the Agency Instructions of the Chief Executive, the relevant procedures in respect of the transaction to aid purchasers using public money will be provided in support documents as Handbooks. These may be developed by the Procurement Regulator as model Handbooks which can be customized by the agency. The Bill thus enables the internal procuring rules of a state owned enterprise to be incorporated into the Handbook for the respective agency. The Bill thus enables the incorporation of existing procedures into the proposed legal and regulatory framework. The Bill enables model Handbooks to be designed for different types of categories of transactions such as those pertaining to construction, consultancy services and Information Technology.*

In addition to developing the mandatory Guidelines in consultation with the National Procurement Advisory Council, the Procurement Regulator will also have the function of –

- enabling agencies to explore alternative service delivery options;
- promoting flexible and accountable *systems for procurement*;
- encouraging a streamlined Government purchasing framework;
- *implementing a procurement system to foster* small to medium enterprises;
- providing best practice advice on the conduct of procurement *including promoting electronic transactions; and*
- *auditing and reviewing the procurement system to ensure compliance with the Operating Principles and Objectives which will require generally the monitoring of award and implementation of transactions.*

The *Procurement* Regulator will also be required to prepare an Annual Report *to be submitted* directly to Parliament identifying *inter alia*:

- the strengths and weaknesses of the procurement system and steps taken to rectify any weaknesses;
- the total value of contracts awarded by agencies so that Parliament can get an idea of the amount of public money involved in procurement; and

- *outcomes of investigations, and lessons learnt which are to be or have been fed back into the procurement system through amendment of the Guidelines.*

*The Procurement Regulator will be supported by a statutory body to be known as the Office of the Procurement Regulator. The expenses of both offices are to be a charge on the Consolidated Fund.*

*The Public Procurement Commission has, with a direct reporting accountability to Parliament, the function of investigating breaches of the procurement system by parties to a transaction involving the expenditure of public money.*

*In so doing, it will have the powers of a Commission of Enquiry as if it were a Commission properly constituted under the Commissions of Enquiry Act, Chapter 19:01. The sanctions it may employ are, inter alia, to order a suspension of the contract pending the hearing in a court of law or to find the transaction to be in breach of the Operating Principles and Guidelines resulting in it being deemed illegal. It is noted that any decision it makes is subject to the Judicial Review Act, 2000.*

*However, persons bringing frivolous complaints to this body will be penalized.*

*Where parties comply with the Operating Principles, Objectives and Guidelines it is highly unlikely there will be much recourse to the Public Procurement Commission.*

The Bill is in **6** Parts as follows:

## **PART I – PRELIMINARY**

This Part deals with operational matters pertaining to the Bill.

*The Bill is to commence on a date to be proclaimed. However, as the National Policy on procurement in the form of the White Paper was tabled in Parliament on 26 September 2005, this means that all agencies would have had to conform to the Operating Principles and Objectives in all their transactions from that date.*

*Clause 1*

*Therefore validates the duty by ensuring that the application of the Operating Principles and Objectives are deemed to apply from the date of the tabling of that Policy. This general duty is retrospective to 26 September 2005 – the date the Policy was tabled in Parliament. The provision entrenches the duty required of agencies even prior to the passage of the Bill to conform to Government Policy.*

*Clause 2*

Contains the definitions pertaining to the Bill.

Key definitions to note are –

*“agency” – means a body incorporated or otherwise that uses public money.*

*“property” – means real or personal property, or other tangible or intangible property including a right, interest, title, claim, chose in action, monetary or financial instrument, present or future, vested or contingent. This definition would encompass those matters that are the traditional focus of procurement such as goods works and services as well as intellectual property rights;*

*“public property” means property that is acquired or is to be acquired by an agency, or is in the care, control or custody of an agency;*

*“public money” all money received by a public body, regardless of source; all money received by a non-public body from a public body.*

*The legal framework will embrace expenditure by a –*

- public organization even if for a private purpose; a private organization for a public purpose regardless of the source or type of funding if it can be identified that the State is ultimately liable.*
- The test therefore is not the mode of the incorporation of the body but the ultimate financial responsibility of the State.*

*“procurement” means the process of acquiring property and services commencing with the identification of the need for the acquisition and ending with*

*the performance of the related contract. This definition conforms to current best practice;*

*“public procurement” means procurement involving the use of public money; (this definition is designed to encompass BOLT (Build, Own, Lease, Transfer), BOOT (Build, Own, Operate, Transfer) and DFC (Design, Finance, Construct) schemes or other funding schemes for the provision of capital works which can be found to be ultimately to the benefit of the public);*

*“services” includes consultancy services, professional services, and any other activity which can be classified as services. This would encompass the provision of legal services, architectural services and maintenance services;*

*“transaction” means any contract, agreement or arrangement for, or in relation to, public procurement or disposal of public property. This definition would encompass related negotiations.*

The nature of these definitions illustrates the ambit of the Act. *The critical element in the triggering of the application of the law is the use of public money in a transaction, not the institutional corpus of the spender nor the purpose nor the classification of the process that can be classified as commercial or private in the context of that transaction.*

### *Clause 3*

*Provides that this Act will bind the State.*

## **PART II – PROCUREMENT FRAMEWORK**

This Part establishes the *legal and* regulatory framework which will apply to all parties to a procurement transaction to ensure that it conforms to the Operating Principles defined as *Accountability, Transparency and Value for Money together with the Objectives of economy, being inter-alia efficiency, effectiveness, competition, ethics, and fair dealing. The promotion*



*of national policy is also required to be addressed in any transaction. These requirements also apply to those involved in the disposal of public property.*

*This Part also identifies the consequence of entering a transaction with an unauthorized purchaser.*

#### *Clause 4*

*States that the Operating Principles and Objectives apply to every transaction and requires that a person who is a party to a transaction conform to the Operating Principles of Accountability, Transparency and Value for Money. A person who is acting on behalf of an agency shall ensure the transaction reflects Value for Money. All parties to the transaction will also address the Objectives of economy, efficiency and competition, ethics and fair dealing according to the highest standards of probity and the provision of proceeds for national development such as the Fair Share Programme. All parties as of law are to ensure that the transaction conforms to the Guidelines.*

*Where there are no Guidelines in place, the operation of the Operating Principles and Objectives will be determined by current best practice.*

#### *Clause 5*

*Provides for the development of National Procurement Guidelines ('the Guidelines') by the Procurement Regulator in consultation with the National Procurement Advisory Council. These Guidelines are to be tabled in Parliament and are to be consistent with the Act, and essentially ensure the operation of best current procurement practice. It is expected that the Guidelines will, inter alia, address issues ranging from the format and content of Requests for Proposal to mechanisms of review of the whole procurement cycle, the publication of details in respect of the operation of best current practice in procurement which would encompass e-procurement, issues of conflict of interest, and emergency measures, to mention a few.*

*The Guidelines may also include direction of a tender process to apply to a specific transaction. The clause also requires the Procurement Regulator to consult with the private sector and civil society represented on the National Advisory Council which also has representatives of the public sector, when developing the Guidelines. The Guidelines are to be published in the Gazette and are a statutory instrument for the purposes of the Statutes Act.*

*Sample Procurement Guidelines are provided in the White Paper (Annex 1).*

*Clause 6*

*Enables the Procurement Regulator to develop generic Handbooks for categories of transactions as guidance material for agencies. These may supplement those developed by agencies. However, the prime responsibility for the development of handbooks lies with the Chief Executive. All Handbooks must conform to the Operating Principles, Objectives and Guidelines and must be published for public comment for a period of 30 days prior to implementation.*

*Clause 7*

*Enables the Chief Executive to issue Agency Instructions for the purpose of expediting transactions. Such Instructions must conform to the Act, Regulations and Guidelines and identify the authorized purchasers for the conduct of a transaction for or on behalf of an agency. An Agency Instruction that does not conform is void.*

*Clause 8*

*Provides that where there is a divergence from an Agency Instruction the Procurement Regulator needs to be accordingly advised, in writing with reasons.*

*Clause 9*

*Identifies the Chief Executive and any person in an agency so authorized by an Agency Instruction to have the lawful authority to enter a transaction. Where a person wrongly enters or represents himself as having authority to enter a transaction, he commits an offence. The clause also treats with the personal liability for damages of an authorized person where the transaction breaches the Act. A transaction that is entered into by a person without lawful authority is voidable at the instance of the agency.*

*The clause also provides that an authorized person is subject to the Integrity in Public Life Act, 2000. The clause requires publication of authorized persons and their spending limits.*

*The clause also provides that neither Cabinet nor a Minister shall be an authorized person.*

*Clause 10*

*Places the onus on suppliers to ensure that they are treating with persons who have the appropriate authority to enter a transaction. This is possible because of the requirement on agencies to publish details of authorized persons in clause 9.*

*The duty on suppliers to conform to the Operating Principles, Objectives and Guidelines is already provided for in clause 4. However, where in the course of an investigation, the Public Procurement Commission or, in the course of an action, a Court, finds that a supplier is recklessly dealing or has recklessly dealt with a non-authorized person, that supplier shall be prohibited, as of law, from entering into any future transaction with an agency for five years either personally or as an officeholder of a company. This means that if a supplier is dealing with a purchaser believing in good faith that the purchaser is an authorized purchaser and after exercising due diligence the purchaser is found to be an unauthorized purchaser the supplier will not be penalized. The same logic applies to transactions involving disposal of property particularly as it affects the would be beneficiary of that disposal.*

### ***PART III – PUBLIC PROCUREMENT COMMISSION***

*This Part enables an aggrieved person to complain, in the manner prescribed, to the Public Procurement Commission, to be appointed by the President and directly accountable to Parliament, that a transaction breaches the Operating Principles, Objectives and Guidelines. The Public Procurement Commission may, either on its own initiative or on the basis of a complaint, investigate any transaction so as to ensure conformity to the Operating Principles, Objectives and Guidelines. The Commission may, pending the outcome of the investigation, suspend the process and employ mediation techniques in the course of the investigation. At the end of the investigation the Commission must advise all parties to the transaction of the outcome of the investigation and report accordingly to Parliament.*

*After investigating the complaint the Commission may confirm a decision as a consequence of mediation, direct a continuation of the suspension pending an appeal, find the transaction has been conducted by an unauthorized person, find that the transaction is contrary to public policy in that it breaches the Operating Principles, Objectives or Guidelines or find that the complaint is frivolous and vexatious.*

*The Part also enables the Commission to refer the matter to an appropriate authority for further dealing. All details of investigations will be reported to Parliament in the annual report. This does not preclude the Commission from submitting a special report with respect to a particular investigation.*

*Certain procedural issues are specified in the Act. In the event there is a gap in the powers of a Commission in respect of process, the Commissions of Enquiry Act can be availed of to fill the gaps.*

#### *Clause 11*

*Establishes a Public Procurement Commission for the purpose of investigating complaints. The Commission is to have the powers of a Commission of Enquiry as if it were constituted under the Commissions of Enquiry Act (Chap. 19:01) and also operates as a mediator in respect of resolving a complaint as if appointed as such under the Mediation Act (Chapter 5:32).*

*This clause provides for the appointment of members of a Public Procurement Commission to be appointed by the President in the exercise of his discretion after consultation with the Prime Minister and the Leader of the Opposition. The persons to be appointed as members of the Commission are to have qualifications in law, finance or engineering.*

#### *Clause 12*

*Details some operational matters of the Commission viz that it is not to be subject to the direction or control of any person for its functions but is directly accountable to Parliament.*

#### *Clause 13*

*Adumbrates the functions and powers of the Public Procurement Commission to investigate transactions and resolve complaints. It is to have the powers of a commission of enquiry appointed under the Commissions of Enquiry Act, Chapter 19:01. The Act specifically mandates the Commission to expedite issues before it in a timely fashion so as to minimize negative economic impact.*

*Clause 14*

*Enables a person who has a complaint that a transaction does not comply with the Act to complain to the Commission. The Commission may also on its own initiative institute the process as regards complaints.*

*Clause 15*

*Specifies the procedure of the Commission when investigating a complaint.*

*Clause 16*

*Treats with the powers of obtaining of material pertinent to the investigation by the Commission.*

*The Commission or a person authorized by it in writing will be able to access documents or property in the course of an investigation. An entry on private property (i.e. not belonging to an agency) can only be effected with the consent of the owner or occupier. Where that consent is not forthcoming, the Commission or person authorized by it to do the investigation shall obtain a warrant to do so. Copies of books, records or documents including those in digital format are also to be made available to the Commission.*

*Clause 17*

*Provides for the Commission to summon certain persons to give evidence as a witness.*

*Clause 18*

*Enables the Commission at the expiry of an enquiry to confirm a decision as a consequence of mediation, direct a continuation of a suspension pending an appeal to the Court or find that the transaction is contrary to Operating Principles, Objectives and Guidelines. The Commission may also refer the matter to an appropriate authority for further action.*

*This clause also provides for a mandatory report to Parliament on the outcome of any investigation.*

*Clause 19*

*Statutorily declares a transaction to be illegal once it is found as a fact to be in breach of the Operating Principles, Objectives and Guidelines by the Commission. This clause also protects the rights of innocent third parties to a transaction so declared.*

*Clause 20*

*Enables the Commission to surcharge a complainant for costs if the complaint is frivolous or vexatious.*

*Clause 21*

*Enables the Commission to make a special report to Parliament in the event that it finds that an officer of an agency is in breach of his duty, commits misconduct or a criminal offence, which report it further refers to the appropriate agency for further action.*

*Clause 22*

*Protects proceedings from being voided for want of form.*

**PART IV – THE *PROCUREMENT* REGULATOR**

*This Part treats with the appointment of a Procurement Regulator. The functions and powers together with operational and institutional matters pertinent to the Procurement Regulator such as the provision of staff and other resources by way of the establishment of the Office of the Procurement Regulator are treated with as well. The Part also provides for an audit of this agency by the Auditor General.*

*Clause 23*

*Provides for the establishment of the office of the Procurement Regulator who is to be appointed by the President in the exercise of his own discretion for a contract of five (5) years or more but not exceeding seven (7) years.*

*The Procurement Regulator is eligible for re-appointment. The total period of his appointment is not to exceed 2 consecutive terms.*

*This clause also provides for the removal of the officeholder in the event that he is infirm of mind or body, or misbehaves. The President may also appoint a person to act and such person has the power to finish what the Procurement Regulator commenced before he went on leave or other temporary absence.*

*The provisions of the Integrity in Public Life Act, 2000 apply to the office holder.*

*Clause 24*

*Establishes the Office of the Procurement Regulator to comprise the staff and support for the Procurement Regulator. The costs incurred for the performance of the functions and powers of the Procurement Regulator and the maintenance of the Office shall be a direct charge on the Consolidated Fund. The accountability of these bodies to Parliament reaffirms the constitutional principle of Parliamentary supremacy for fiscal management.*

*Clause 25*

*Prescribes the functions of the Procurement Regulator. The prime function is to ensure an effective, efficient and relevant procurement system that conforms to the Operating Principles, Objectives and Guidelines. The Procurement Regulator is required therefore to develop, implement and review Guidelines in consultation with the National Procurement Advisory Council for the implementation of the Operating Principles and Objectives. This provides for inputs from industry and service providers. The functions of the Procurement Regulator also include, inter alia, establishing a comprehensive database with information on procurement opportunities, processes, contract awards and prices, the promotion of public understanding of procurement, the fostering of improvements with the use of technology including e-commerce, the receipt of complaints and reporting to Parliament.*

*This clause states that in the exercise of his functions the Procurement Regulator is not subject to the direction or control of any person. In this regard his independence of office is analogous to that of the Auditor General.*

*Clause 26*

*Specifies that in the performance of his functions, the Procurement Regulator shall have the power to do anything necessary or convenient for the performance of his functions under the Act including entering contracts and hiring consultants and acquiring property. This would enable the Procurement Regulator to obtain the necessary staff and consultancy services, and purchase or lease property.*

*Clause 27*

*Provides for the Auditor General to audit the Procurement Regulator and the Office of the Procurement Regulator annually.*

**Clause 28**

Requires the **Procurement** Regulator, similar to the Auditor General, to report at least annually to Parliament **but no later than forty (40) days after the expiry of the financial year**. The Report is required to inform Parliament of the total figure of contracts awarded **involving public money and cost overruns by agencies, details of transactions involved in a project including the beneficiaries of the transaction and the value of those transactions to the State**, outcomes of investigation including lessons learnt, **details of changes to the Guidelines to implement best practice and recommendations including those of the National Procurement Advisory Council**.

**The Report does not need to include details of contracts of value less than \$50,000 or contracts for the settlement of a legal liability. The Speaker is to table the Report within 28 days of receipt.**

**PART V – NATIONAL PROCUREMENT ADVISORY COUNCIL**

**This Part identifies the membership and functions of the National Procurement Advisory Council which essentially, as a consultative body, provides inputs into the design and content of the Guidelines so as to ensure relevance.**

**Clause 29**

Establishes the National Procurement Advisory Council in a manner so as to avoid allegations of executive manipulation of the membership. The membership of the National Procurement Advisory Council, in conformity with the Policy, will comprise **fourteen (14) persons being the** nominees of three civil society organizations which are publicly acknowledged as having a concern for good governance, five organizations representing the construction, manufacturing and retail sectors of Trinidad and Tobago, two representing labour and professional organisations, **a nominee representing the State Owned Enterprises, a nominee of the Tobago House of Assembly, an ex officio member from the Ministry of Finance and the Chief State Solicitor**.

The nominating organizations are to be selected by the President in his own discretion after taking into account the record of those organizations in serving the public interest. **The Procurement Regulator is to advise the public of the successful nominees by notice in the**



*Gazette and a major circulating daily newspaper. Nominees will hold their positions for a term of 3 years*

*Operational matters for the Council are specified in the Second Schedule.*

*The Council is to present an annual report to the Procurement Regulator who includes that report in his own report to Parliament.*

#### *Clause 30*

Provides that the function of the Council is to consider the effectiveness and efficiency of the procurement system and to make recommendation to the **Procurement** Regulator in the development of the Guidelines and Handbooks so as to ensure conformity with the Operating Principles, **Objectives and Guidelines**. The Council, *when so doing*, is to canvass the views of the national community as widely as possible. *The Council may also co-opt representatives of agencies to assist in its function but such persons will not have a vote.*

#### *Clause 31*

*Requires the Procurement* Regulator to provide secretariat services to the Council.

#### *Clause 32*

Requires the **Procurement** Regulator to attend meetings of the Council but in so doing the Procurement Regulator has no vote.

### **PART VI – MISCELLANEOUS**

*This Part deals with matters that enhance effective implementation of the Act including protection from liability, statutory obligations of reporting by agencies, offences, repeal of the Central Tenders Board Ordinance, 1961 and transitional arrangements. To ensure there is consistency in the definition in respect of expenditure of public money, the Exchequer and Audit Act has been consequently amended.*

#### *Clause 33*

*Protects a member of the Commission from liability.*

*Clause 34*

*Provides for privilege of information in the course of investigation as if in a court of law and protection from defamation proceedings.*

*Clause 35*

*Provides that a request made under this clause is to be treated as if it were made under the Freedom of Information Act, 1999. It is to be noted that, as some agencies affected are currently outside the jurisdiction of the Freedom of Information Act, 1999, there is need for this provision. The section also provides that the failure to disclose on the grounds of confidentiality cannot encompass mere embarrassment that such disclosure would afford. The section is to apply notwithstanding any other law.*

*Clause 36*

*Requires that the person authorized to enter a transaction publish specified details of the award of a contract, or any variation and other relevant details contemporaneously with the making of the award. This provision not only conforms to current best practice but also ensures transparency.*

*Clause 37*

*Guarantees legal remedies under the Judicial Review Act, 2000 to be available to any decision made in the course of procurement.*

*Clause 38*

*Requires a person who has a reasonable belief that collusion between all or any of the parties, or any breach of the Act has occurred, as a matter of law, to report accordingly to the Procurement Regulator or the Public Procurement Commission. The Procurement Regulator will be required to refer that report to the Public Procurement Commission and report accordingly to Parliament. This promotes transparency.*

*Clause 39*

*Treats with offences. It provides that a person who fails to comply with the Act commits an offence.*

*This clause also makes it an offence to hold assets that are prima-facie disproportionate to emoluments one can be expected to receive as an officer, without justification. The word “disproportionate” in subsection (3) conveys the idea that the acquisition of the total value of the assets under the control of a person who was an officer of the agency could not reasonably have been afforded by the person at that date given total emoluments provided.*

#### *Clause 40*

*Provides a general penalty for an offence under the Act to be a fine of \$500,000 and 7 years imprisonment. In addition an offence under this Act is deemed a “specified offence” for the purpose of the Proceeds of Crime Act, 2000 thereby attracting the capacity of the State to trace public funds.*

#### *Clause 41*

*This clause protects a ‘whistleblower’ from being demoted, harassed or otherwise discriminated against because of his report made under Clause 39.*

*It will also be an offence to discharge, suspend, demote or otherwise negatively treat a person simply because they have reported a breach of the Act to the Procurement Regulator.*

#### *Clause 42*

*Prescribes a Parliamentary majority of 2/3 in the event of future amendment of sections 4 to 10 of the Act. This entrenches the framework and acknowledges that the flexibility of process to ensure competitiveness will be through the subordinate instruments such as the Guidelines and Handbooks. Parliament, by this provision, is entrenching the provisions of this Act particularly in the future event that a disaffected executive with a simple Parliamentary majority would want to change the framework.*

#### *Clause 43*

*Prescribes the regulation making power to reside with the President.*

#### *Clause 44*

*Validates, to the extent of their validity, transactions entered into by those agencies that fall outside the ambit of the Central Tenders Board where those transactions conform to the agency’s internal tendering rules and the Operating Principles, Objectives and Guidelines as of 26 September, 2005, the date of the tabling of the Policy in Parliament.*

*Clause 45*

*Repeals the Central Tenders Board Ordinance, 1961 and validates any transaction entered into or in force under the authority of the Central Tenders Board on behalf of an agency at the commencement of this Act as validly conducted by an agency under this Act.*

*The section also provides that a reference to the Central Tenders Board Ordinance 1961 or the Director of Contracts in any legislation shall be construed as reference to this Act or the Procurement Regulator as the context demands.*

*The section also provides for the continuation of the Central Tenders Board Regulations, 1965 Regulations and the Central Tenders Board (Defence Force and Protective Services (No. 2) Order 1992), pending the formulation of in-house tender procedures by an agency, and the Guidelines, notwithstanding the repeal of the principal legislation pending the implementation of the Guidelines.*

*Clause 46*

*Provides for the consequential amendments to the Exchequer and Audit Act which include revised definitions of “public money”, “revenue” and “statutory body” so as to harmonize public expenditure on the acquisition of property and services with provision in the Exchequer and Audit Act.*

*First Schedule*

*Provides for the administration and terms and conditions of members of the Public Procurement Commission.*

*Second Schedule*

*Provides for the operation of the National Procurement Advisory Council including the quorum requirements, resignation of an officer, termination of appointment and remuneration of members.*

***PUBLIC* PROCUREMENT AND DISPOSAL OF PUBLIC PROPERTY BILL, 2010**

**Arrangement of Clauses**

*Clause*

**PART 1 – PRELIMINARY**

1. Short title and commencement
2. Interpretation
3. Act to bind the State

**PART II – PROCUREMENT FRAMEWORK**

4. ***Application of the Act***
5. Mandatory Guidelines
6. Handbooks as guidance material to supplement Guidelines
7. Chief Executives to issue Agency Instructions to supplement Guidelines
8. ***Report of inconsistent action with Agency Instruction***
9. ***Authorized person for the purpose of a transaction***
10. Supplier not to enter transaction unless with an authorized purchaser

***PART III – PUBLIC PROCUREMENT COMMISSION***

11. ***Establishment of the Public Procurement Commission***
12. ***Matters pertaining to the performance of the Commission***
13. ***Functions and powers of the Commission***
14. ***Instituting process to treat with a complaint***
15. ***Procedure of Commission***
16. ***Access to property of an agency***
17. ***Witness on oath***
18. ***Outcome of Commission***
19. ***Illegal transaction***
20. ***Surcharge for frivolous complaint***
21. ***Special Report***
22. ***Proceedings not to be voided for want of form***

**PART IV – *PROCUREMENT* REGULATOR**

23. Appointment of the ***Procurement*** Regulator
24. ***Establishment of the Office of Procurement Regulator***
25. Functions of the ***Procurement*** Regulator
26. Powers of the Procurement Regulator

- 27. *Audit of the Procurement Regulator*
- 28. Report of the Procurement Regulator to Parliament

#### **PART V – NATIONAL PROCUREMENT ADVISORY COUNCIL**

- 29. National Procurement Advisory Council
- 30. Functions *and powers* of the National Procurement Advisory Council
- 31. Secretariat services to be provided by the Procurement Regulator
- 32. Procurement Regulator to attend Council

#### **PART VI – MISCELLANEOUS**

- 33. *Protection from liability*
- 34. *Privileged information and protection from defamation proceedings*
- 35. Procurement records to be *available to* public
- 36. *Agencies to publish award of contracts*
- 37. *Application of Judicial Review Act, 2000*
- 38. Reporting to Procurement Regulator *or Public Procurement Commission of collusion*
- 39. Offences
- 40. **General penalty**
- 41. *Protection for whistleblowers*
- 42. Amendment to Act
- 43. Regulations
- 44. Validation of transactions by agencies outside the jurisdiction of the Central Tenders Board Ordinance, 1961
- 45. Repeal and savings *of transaction within the jurisdiction of the Central Tenders Board Ordinance, 1961*
- 46. *Consequential amendments to the Exchequer and Audit Act, Chap. 69:01*

*First* Schedule

*Second* Schedule

## BILL

AN ACT to promote the public interest by prescribing the principles of *good governance, namely* accountability, transparency and value for money *in public procurement according to the objectives of economy, efficiency and competition; these principles and objectives are also to apply to the disposal of public property; the establishment of the Public Procurement Commission, to be directly accountable to Parliament, to investigate irregularities and resolve complaints arising out of the procurement system;* the establishment of the Procurement Regulator, to be directly accountable to Parliament for the effective monitoring of the system of public procurement *and to be supported by a statutory body called the Office of the Procurement Regulator, and to be supported by the national community through the National Procurement Advisory Council,* and related matters.

Enactment                      Enacted by the Parliament of Trinidad and Tobago as follows:

### PART I – PRELIMINARY

Short title and commencement              1.              (1) This Act may be cited as the Public Procurement and Disposal of Public Property Act, 2010.

*(2) Subject to subsection (3), this Act shall come into effect on a date to be fixed by the President, by Proclamation.*

*(3) Section 4 (1), 4(2)(a) and (b) and 4(3) shall be deemed to have come into operation on 26 September, 2005.*

Interpretation                      2.              In this Act -

“agency” means -

(a) a ministry or department of government;

(b) a corporate body *that is established for a public purpose;*

(c) *any other body that is involved in public procurement;*

(d) a person as prescribed for the purposes of this definition;

“Agency Instruction” means an instruction issued in accordance with section 7;

“appropriate authority” means -

- (a) the Auditor General;
- (b) the relevant Service Commission;
- (c) the Commissioner of Police;
- (d) the Director of Public Prosecutions;
- (e) an authority as prescribed;

***“authorized person” means a person referred to in section 9;***

“Chief Executive” means a Permanent Secretary, a Head of Department or a person who is the chief *executive* officer of an agency;

***“Commission” means the Public Procurement Commission established by section 11 and a ‘member of the Commission’ has the corresponding meaning;***

“Constitution” means the Constitution of the Republic of Trinidad and Tobago;

“Council” means the National Procurement Advisory Council established in accordance with section 29;

“disposal of public property” includes the transfer without ***consideration by way of sale or lease, a concession, a licence, or other alienation, of public property;***

“Guidelines” means the National Procurement Guidelines referred to in section 5;

***“Objectives” means the objectives specified in section 4(2) (b);***

***“Office of the Procurement Regulator” means the body established by section 24;***



***“Operating Principles” means the principles of accountability, transparency and value for money;***

“procurement” means the process of acquiring property or services commencing with the identification of the need of the property or services and ending with the performance of the related contracts;

“Procurement Regulator: means the person performing the duties of, or occupying, the office of the Procurement Regulator as established by section 23;

***“property” means real or personal property or other tangible or intangible property including a right, interest, title, claim, chose in action, monetary or financial instrument, whether present or future or vested or contingent;***

“public money” means money that is-

- (a) received or receivable by ***the State, a statutory body or a state controlled enterprise;***
- (b) raised by an instrument from which it can be reasonably inferred that the State accepts ultimate liability in the case of default;
- (c) ***spent or committed for future expenditure, by the State, a statutory body or a state controlled enterprise;***
- (d) ***distributed by the State, a statutory body or a state controlled enterprise to a person; or***
- (e) ***raised by a private body in accordance with a statutory instrument, for a public purpose;***

“public procurement” means procurement involving the use of public money;

***“public property” means property acquired, or in the process of being acquired, by an agency or in the care, control or custody of an agency whether as a trustee or not;***

“services” *includes* consultancies, professional services, *management services* and *related* activities;

“State controlled enterprise” means a company that is registered under

Chapter 81:01

the Companies Act -

(a) *for a public purpose; or*

(b) *where the government or any person controlled by the government is entitled to exercise control directly or indirectly over the affairs of the company;*

“statutory body” means -

(a) the Tobago House of Assembly as established by section 141A of the Constitution;

(b) a board, commission, body *or body corporate established by an act other than that regulating the conduct of professional occupations;* or

*“supplier” includes a contractor or a consultant;*

“transaction” means any contract, agreement, licence or arrangement for or in relation to -

(a) *public procurement;*

(b) *the use of public property by an agency; or*

(c) *the disposal of public property.*

Act to bind the State

3. This Act binds the State.

## **PART II - PROCUREMENT FRAMEWORK**

Application of the Act

4. ***(1) The Operating Principles of Accountability, Transparency and Value for Money, together with the Objectives and Guidelines shall apply to a transaction.***

***(2) A person who is a party or seeks to be a party to a transaction shall ensure that the transaction-***

***(a) conforms to the Operating Principles;***

***(b) addresses the Objectives of -***

***(i) economy, efficiency and competition;***

***(ii) ethics and fair dealing according to the highest standards of probity and professionalism;***

***(iii) the promotion of national industry and production that conforms to government policy effecting sustainable development, poverty alleviation and environmental management;***

***(iv) Social return on investment; and***

***(c) conforms to the Guidelines and where no Guidelines are in place, to current best practice.***

***(3) A person who is a party to a transaction for or on behalf of an agency shall ensure that the transaction conforms to the Operating Principle of Value for Money.***

Mandatory Guidelines

5. (1) The Procurement Regulator shall develop ***the National Procurement Guidelines*** -

***(a)*** for the implementation and monitoring of the Operating Principles and Objectives in their application to a transaction ***and the system of public procurement;***

***(b)*** ***for*** the publication of details in respect of a transaction;

- (c) to treat with matters for, ***and*** in relation to a transaction;
- (d) to ensure ***best practices in public procurement***.

(2) The Guidelines may address the following:

(a) general rules relating to procurement including those with respect to -

- (i) the format and content of requests for proposals;
  - (ii) the means of improving the process of competitive tendering and contracting;
  - (iii) the system of using bonded ***or preferred*** suppliers;
  - (iv) the preference, according to Government policy, for local suppliers and small business in procurement;
  - (v) ***the principle of*** open and effective competition including public notification of opportunities and evaluation criteria to be used in the bid process;
  - (vi) advertising rules and time limits;
  - (vii) participation and qualification ***of interested parties to a transaction;***
  - (viii) the tender documentation and technical specifications;
  - (ix) the tender evaluation and award criteria;
  - (x) the reporting ***and monitoring*** requirements;
  - (xi) ***conflict of interest;***
  - (xii) ***measures in times of emergency;***
- (b) ***the procurement indispensable for national security or national defence purposes***
- (c) public consultation on major contracts;
- (d) the use of a joint undertaking by all parties to a transaction to comply with an agreed code of ethics with sanctions;
- (e) the consideration of government policies in public procurement;

- (f) an independent review process *to include civil society at critical points of the system of public procurement;*
- (g) *reporting requirements of agencies;*
- (h) *monitoring of the performance of the contract;*
- (i) the relationship of the Handbooks to the Guidelines;
- (j) *general rules on disposal of public property including those with respect to disposal of unserviceable, surplus or obsolete public property and sale or lease of real property in the care, control or custody, of an agency;*
- (k) *Parliamentary approval of Government to Government contracts involving the use of public money; and*
- (l) *any other matters as are prescribed.*

(3) The Procurement Regulator, when developing the Guidelines, shall consult with the Council.

(4) The Guidelines –

- (a) shall be consistent with this Act;
- (b) may adopt or adapt any published **international** standard **in accordance with best procurement practice;**
- (c) shall specify exemptions in certain restricted circumstances *that are not inconsistent with the public interest;*
- (d) *shall be public and easily available.*

(5) The Procurement Regulator shall submit the Guidelines *directly to Parliament to be tabled no later than ten (10) sitting days of receipt by Parliament.*

(6) *The Guidelines* shall be subject to negative resolution of Parliament.

(7) The Guidelines shall be published in the *Gazette* and are a

Handbook as  
guidance  
material to  
supplement  
Guidelines

6. (1) The Procurement Regulator may develop Handbooks *or other material* to serve as detailed guides for the process to be followed in respect of *specified categories* of transactions.

*(2) The Chief Executive shall cause a Handbook to be published in respect of the procedures to be followed by his agency in respect of procurement and disposal of public property.*

*(3) A Handbook, whether produced by the Procurement Regulator or an agency shall conform to the Operating Principles, Objectives and Guidelines.*

*(4) A Handbook shall be published for public comment for 30 days before it becomes operational.*

Chief Executive  
to issue Agency  
Instructions to  
supplement  
Guidelines

7. (1) The Chief Executive may issue, in writing, an internal administrative direction for the purpose of expediting a transaction *to be known as an Agency Instruction*.

*(2) The Chief Executive shall forward a copy of the Agency Instruction to the Procurement Regulator before its date of operation.*

*(3) An Agency Instruction shall-*

- (a) conform to the Act, Regulations and Guidelines and take into account any guidance material such as Handbooks issued by the Procurement Regulator so that the practices of the agency relating to procurement and disposal of public property conform to the Operating Principles, Objectives and Guideline; and

(b) authorize a person to enter into a transaction for, or on behalf of, the agency.

**(4)** An Agency Instruction that fails to conform **to** the Act, Regulations or Guidelines is void.

Report of  
inconsistent  
action with  
**the**  
Agency Instruction

**8. A person who is an officer or employed by an agency and being a party to a transaction makes a decision that is inconsistent with an Agency Instruction shall make a written record for the Procurement Regulator of the reasons of the decision for so acting.**

Authorized  
person for  
the purpose of  
transaction

**9. (1) A Chief Executive, or a person authorized in accordance with an Agency Instruction, has the authority to execute a transaction or enter a related negotiation for or on behalf of the agency which he serves.**

**(2) The Chief Executive may authorize, by an Agency Instruction, a person to enter a transaction or related negotiation for or on behalf of an agency.**

**(3) The Chief Executive shall cause the names and positions of the persons authorized under subsection (2) and the extent of their capacity to treat, to be published.**

**(4) A transaction that is entered into by a person without lawful authority is voidable at the instance of the agency.**

**(5) A person authorized to act for or on behalf of an agency shall be personally liable for the damages incurred by the agency as a consequence of entering a transaction in breach of the Operating Principles, Objectives and Guidelines.**

*(6) An authorized person under subsections (1) and (2) is deemed to be “a person in public life” for the purposes of the Integrity in Public Life Act, 2000.*

(7) A person who wrongly represents himself as a person authorized to enter a transaction commits an offence.

*(8) Neither Cabinet, a Minister of Government nor a person directly instructed by either, is authorized to enter a transaction.*

Supplier not to enter transaction unless with an authorized purchaser

**10.** (1) A person who is, or intends to be, a supplier *shall ensure that the person with whom he is entering into a transaction or related negotiations is an authorized person.*

*(2) A supplier who is found either by the Procurement Regulator, the Public Procurement Commission or the Court to have recklessly entered, or be entering, a transaction with an unauthorized person shall be prohibited from entering any future transaction with any agency for a period of five years either in a personal capacity or in respect of any corporate body of which that person is a corporate office holder, in addition to any other penalty.*

### ***PART III - PUBLIC PROCUREMENT COMMISSION***

Establishment of *standing* the Public Procurement Commission

**11.** (11) *For the purposes of this Act there is hereby constituted as a commission of enquiry a body to be known as the Public Procurement Commission which shall be directly accountable to Parliament.*

*(2) The membership of the Commission shall comprise a full time Chairman, 4 full time Commissioners and 4 part-time Commissioners being persons with a minimum of experience of 10 years in the disciplines of law, accounting and engineering and such other disciplines as the President sees*



*fit, to be appointed by the President in the exercise of his discretion after consultation with the Prime Minister and the Leader of the Opposition;*

*(3) The Chairman of the Commission shall be a retired judge;*

*(4) The terms and conditions of the members of the Commission and other matters pertaining to the operation of the Commission are prescribed in the First Schedule.*

*(5) The costs incurred for, and in relation to, the performance of the functions of the Commission shall be a direct charge on the Consolidated Fund.*

Functions and

powers of

the Commission

*12. (1) The function of the Commission is to investigate and resolve*

*complaints arising out of public procurement, whether by the submission or a complaint by an aggrieved party or by acting on its own initiative.*

*(2) In the exercise of its functions the Commission shall expedite issues before it in a timely fashion and take such other steps so as to minimize negative economic impact arising out of the performance of its functions.*

*(3) Subject to the Act, the Commission is deemed to be a*

*commission*

Chapter 19:01 *for the purposes of the Commissions of Enquiry Act and a member of the Commission shall have all the powers of a Commissioner appointed under that Act.*

Chap. 5:32

*(4) The Commission may conduct a mediation in accordance with the Mediation Act.*

Matters pertaining to the performance of the Commission

*13. (1) Where a transaction that is the subject of investigation by the Commission is in excess in value of \$100 million, no less than three (3) of members of the Commission shall hear the matter.*

*(2) The Commission shall not be subject to the direction or control of any other person or authority in the performance of its functions but is directly accountable to Parliament.*

(3) Nothing in subsection (2) shall be construed as preventing the Minister with the responsibility for such aspects of the administration of this Act to make such arrangements as are necessary or desirable to facilitate liaison between Parliament and *the Commission*.

(4) *The Commission* upon hearing the parties to a transaction may direct the suspension of the procurement process pertaining to a transaction pending the outcome of an investigation and in so doing shall provide reasons.

(5) *The Commission* may employ alternative dispute resolution and other mediation techniques in the course of investigating and resolving a complaint.

(6) Subject to sections *14, 15, 16 and 17, the Commission* may regulate its own procedure and confer powers and impose duties on any officer of an agency.

(7) *The Commission* shall as soon as possible at the expiry of the investigation advise the parties to the transaction of the outcome of the investigation, and report accordingly to Parliament.

Instituting  
process to treat  
with a complaint

14. (1) A person who has a complaint that a transaction to which this Act applies is in breach of the Operating Principles and Objectives or the Guidelines, may complain to *the Commission* in writing in the manner as publicly specified by *the Commission*.

(2) *The Commission* may on its own initiative, or shall as a result of a complaint made under subsection (1), investigate a matter relating to a transaction so as to ensure the integrity of the process applied in the transaction and the application of the Operating Principles, Objectives and Guidelines.

(3) *The Commission* may offer mediation to the parties to a complaint in the first instance.

Procedure of  
*Commission* Commission

15. (1) *For the purposes of an investigation under this Act, the Commission shall inform itself in such manner as it sees fit.*

(2) *For the purpose of an investigation under this Act, the Commission may-*

- (a) by notice in writing, require an agency or any officer or employee of that agency to furnish information that may assist the investigation into a transaction in such manner and at such times as may be specified by the **Commission**;
- (b) by notice in writing require any person to provide information, data or reports for or in relation to, a transaction as may be in the possession or under the control of that person.

***(3) The Commission may summon before it and examine on oath -***

- (a) any person who has made representations to him; or***
- (b) any officer, member or employee of a public body or any other person who, in the opinion of the Commissioner is able to furnish information relating to the investigation.***

***(4) No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he could not be compelled to give or produce in proceedings in any court of law.***

Access to  
property of an  
agency  
property

16. (1) For the purpose of an investigation under this Act the **Commission or a** person authorized by it in writing for that purpose shall have the power to –
- (a) access books, records, documents, stores or other  
  
belonging to an agency in respect whether in the possession of an official or any other person, and make copies accordingly;
  - (b) enter premises or a location under the care, control or custody of an agency where the Commission has reason to believe that the books, records, documents or other property pertinent to the investigation may be found;
  - (c) enter premises occupied by any person in order to make such enquiries or to inspect a document, record or property that he considers necessary to any matter being investigated by him.

*(2) The Commission or a person authorized by it in writing for that purpose shall only enter premises, other than those belonging to an agency with the consent of the occupier or owner, and where that consent is not forthcoming, may enter after having obtained a warrant to so do.*

*(3) A person, where so directed by the Commission or a person authorized in writing, shall make available copies of books, records or documents including those in digital format as required.*

Witness on oath

*17. The Commission may summon before it and examine on oath -*

*(a) any person who has made representations to it; or*

*(b) any officer, member or employee of a public body or any*

*other person who, in the opinion of the Commissioner is able to furnish information relating to the investigation.*

Outcome of  
Commission

**18.** (1) Upon the completion of the investigation the Commission may –

- (a) confirm a decision that is satisfactory to all and in compliance with this Act as a result of mediation or arbitration;
- (b) direct a continuation of the suspension made under section 13(5) pending an appeal to the Court by the parties;
- (c) find that a transaction has been conducted by an unauthorized purchaser;
- (d) find the transaction is contrary to the Operating Principles, Objectives or Guidelines;
- (e) find the complaint to be frivolous and vexatious.

*(2) The Commission in addition to the powers in subsection (1) may refer the matter to an appropriate authority for further action.*

*(3) The Commission shall present a report to Parliament on the outcome of any investigation on any matter pertaining to public procurement or disposal of public property.*

Illegal transaction **19.** (1) Where, as a consequence of an investigation by *the Commission*, the party to a transaction is found by the *Commission to be* in breach of an Operating Principle, Objective or Guideline, the transaction shall be deemed to be *illegal*.

*(2) The deeming of a transaction to be illegal shall not preclude the enforcement of remedies by an innocent third party against a party to that transaction.*

*(3) After conducting an investigation under this Act, a Commission shall, in writing, inform the Chief Executive of the agency concerned and the Minister having responsibility of that agency the result of that investigation and make such recommendations as he considers necessary in respect of the matter which was investigated.*

*(4) Where a report of the Commission reflects adversely upon any person the Commission shall, so far as practicable, inform that person of the substance of the report.*

Surcharge for frivolous complaint **20.** *The Commission* may surcharge a person instituting a complainant for costs where the complaint is found by the Commission to be frivolous or vexatious.

Special Report

*21. If a Commission finds, during the course of its investigations or on the conclusion of a hearing that there is evidence of a breach of duty, misconduct or a criminal offence on the part of an officer or member of an agency, it shall refer the matter to the person competent to take disciplinary or other proceeding as may be appropriate against that officer or member, and in all such cases shall submit a special report to Parliament.*

Proceedings not  
*of* to be voided for  
want of form

*22. The proceedings of a Commission shall not be rendered void for want of form.*

#### **PART IV – THE PROCUREMENT REGULATOR**

Appointment of  
the Procurement  
*the* Regulator

*23. (1) The Procurement Regulator shall be appointed by the President in the exercise of his own discretion on terms and conditions to be approved by President.*

*(2) The Procurement Regulator is deemed to be “a person in public life” for the purpose of the Integrity in Public Life Act 2000 and is directly accountable to Parliament for the performance of his functions and powers..*

(3) The Procurement Regulator shall be appointed on a contract for a term of not less than five (5) years but no more than seven (7) years on terms as determined by the President in the exercise of his own discretion and is eligible for re-appointment for one more consecutive term only.

(4) The President may terminate the appointment of the Procurement Regulator where that person -

- (a) becomes of unsound mind or is incapable of carrying out the duties of the Procurement Regulator;
- (b) has been declared bankrupt;
- (c) is convicted of an offence which brings the office into disrepute;
- (d) is guilty of misconduct in relation to the functions, powers and duties of the Procurement Regulator;
- (e) is absent from three consecutive meetings of the Council except on leave granted by the President;
- (h) fails materially or wilfully to carry out of the duties or functions as required of the Procurement Regulator under this Act.

(5) Where the Procurement Regulator is unable to act by reason of illness or other cause, the President may appoint a person to act in his stead and the person so appointed may complete any unfinished business commenced by the Procurement Regulator.

Establishment of  
the Office of  
Procurement  
Regulator

***24. (1) There shall be established by this Act a statutory authority to be known as the Office of the Procurement Regulator, to provide support to the Regulator in the performance of his functions and powers.***

***(2) The Parliament shall provide the Procurement Regulator and the Office of the Procurement Regulator with adequate resources including funds for the efficient discharge of the functions of that office.***

***(3) The costs incurred for the performance of the functions of the Procurement Regulator and the Office of the Procurement Regulator shall be a direct charge on the Consolidated Fund.***

Functions of the  
an Procurement  
conforms to Regulator

**25.** (1) The prime function of the Procurement Regulator is to ensure effective, efficient and relevant procurement system that the Operating Principles, Objectives and Guidelines.

(2) The Procurement Regulator shall, in relation to public procurement and disposal of public property, develop and review the Guidelines in consultation with the National Procurement Advisory Council for the implementation of the Operating Principles and Objectives.

(3) The Procurement Regulator has the function of –

- (a) promoting a flexible and responsible system for procurement;
- (b) developing a streamlined public procurement framework;
- (c) enabling agencies to explore alternative service delivery options ***within the context of the Operating Principles, Objectives and Guidelines;***
- (d) providing ‘best practice’ advice in the conduct of procurement including the promotion of electronic transactions;
- (e) implementing a procurement system to foster small and medium enterprises;



(f) auditing and reviewing the systems of procurement to ensure compliance with the Operating Principles and Objectives.

(g) *monitoring the award and implementation of transactions to ensure compliance with the Operating Principles, Objectives and Guidelines;*

(h) *liaising with the Public Procurement Commission with respect to its powers so as to advise and guide parties to a transaction and the public of current best practice.*

(4) Without limiting the generality of the foregoing, the Procurement Regulator may-

(a) harmonize policies, systems and practices of agencies in relation to public procurement and disposal of public property;

(b) *review procurement practices and delivery systems annually to identify best practices;*

(c) establish a comprehensive database with information on procurement processes, contract awards and prices and any other information of public interest as the Procurement Regulator determines:

(d) determine, develop, introduce, maintain and update related system-wide data-bases and technology;

(e) maintain a Register of Suppliers *in respect of classes of transactions;*

(f) adopt, adapt and update common specifications, standards and other whole-of-government arrangements for mandatory compliance;

(g) promote public understanding of procurement and related processes;

(h) in consultation with competent authorities set training standards, competence levels, and certification requirements to promote best practices in procurement;

(i) prepare, update and issue authorized versions of Handbooks incorporating standardized bidding documents, procedural forms and attendant documents for use by agencies in public procurement and disposal of public property;

(j) ensure that any deviation by agency from the use of the Handbooks, standardized bidding documents, procedural forms, any other attendant documents and standardized contracts, accord with the Operating Principles, Objectives, and Guidelines:

(k) foster improvements with the use of technology in public procurement including electronic trading;

(l) conduct periodic inspections of the records and proceedings of the procuring and disposing practices of agencies to ensure the application of the operating Principles, Objectives and Guidelines;

(m) ***refer complaints concerning a transaction to the Public Procurement Commission;***

(n) institute audits for or in relation to –

(i) public procurement or disposal of public property;

(ii) the content and conduct of a contract; and

(iii) the conduct of a transaction;

(o) ***heighten the awareness of agencies and members of the public to issues of public procurement;***

(p) establish and maintain institutional linkages with professional entities and other bodies with interest in public

procurement and disposal of public property, *particularly the Public Procurement Commission;*

(q) undertake research and surveys with respect to public procurement and disposal of public property; and

(r) under take any other activity that may be necessary for the implementation of the Operating Principles, Objectives and Guidelines.

(5) In the exercise of his functions the Procurement Regulator shall not be subject to the direction or control of any person or authority.

*(6) In the exercise of his functions, the Procurement Regulator may request an agency for details in respect of a transaction, and the agency shall comply with that request within the time specified in the request.*

Powers of the  
necessary

Procurement  
Regulator  
*offer*

**26.** The Procurement Regulator shall have the power to do anything or convenient for performing his functions under this Act, including the power to enter *into* contracts, hire consultants purchase or lease real property *and financial incentives for reports of breaches of this Act.*

Audit of the  
Procurement  
Regulator

**27.** The Auditor General shall audit the Procurement Regulator and the Office of the Procurement Regulator annually and submit the report to Parliament.

Report of the  
Procurement  
Regulator to  
Parliament

**28.** (1) The Procurement Regulator shall present an annual report to Parliament no later than forty (40) days after the expiry of the financial year to which that report relates.

(2) The report shall include-

- (a) a figure representing the total value of contracts as awarded by agencies, *and another figure representing* the cost of the total value of contract overruns;
- (b) the number of unfulfilled contracts awarded by agencies in respect of procurement;
- (c) the means of financing the contracts;
- (d) the number of variations to a contract and related costs;
- (e) a summary of transactions on an agency by agency basis specifying in respect of public procurement-
  - (i) the number of contracts awarded;
  - (ii) the means of funding the contracts together with quantum;
  - (iii) the number of contracts varied;
  - (iv) the number of contracts with cost overruns;
  - (v) the quantum of those overruns;
  - (vi) the number of unfulfilled contracts and the quantum of cost incurred;
  - (vii) with respect to the procurement for a project, the expected deliverables of that project, the number and value of the contracts involved and a list of the successful awardees with respect to contracts issued in relation to the project together with a brief description of each contract;
  - (viii) lessons learnt as a consequence of the management contracts;

- (f) a summary of transactions concerning the disposal of public property on an agency by agency basis -
  - (i) in respect of real property – the address and other identifying details of the property disposed of including value, to whom it was disposed, date of disposal, means of disposal, and consideration;
  - (ii) *in respect of property other than real property, details of the property disposed of including value, to whom it was disposed, means of disposal, and consideration;*
- (g) details of changes implemented to ensure current best practice for procurement, and disposal of public property;
- (h) the contents of the report of the Council;
- (i) recommendations.

*(3) The report does not need to include details of contracts less than \$50,000 or contracts for the settlement of legal liability other than the total number and quantum.*

(4) The Speaker shall cause a copy of that report to be laid before Parliament within twenty-eight (28) days of its receipt by him, or if Parliament is not then in session, within twenty-eight (28) days of the commencement of its next session.

## **PART V - NATIONAL PROCUREMENT ADVISORY COUNCIL**

National  
Procurement

**29.** (1) There shall be established a National Procurement Advisory Council comprising fourteen (14) persons being -

## Advisory Council

- (a) *a nominee of the Trinidad and Tobago Transparency Institute and one nominee from each of two (2) other civil society organizations established under law having an interest in good governance;*
- (b) *two nominees of the Joint Consultative Council for the Construction Industry and one each from the Trinidad and Tobago Manufacturers' Association, the Trinidad and Tobago Chamber of Industry and Commerce and the Energy Chamber;*
- (c) a nominee *from an organization representing labour and one representing a professional organization;*
- (d) *a nominee of the Tobago House of Assembly;*
- (e) a nominee of a body that represents the State enterprises other than the Corporation Sole;
- (f) the Chief State Solicitor; and
- (g) an *ex-officio* member from the Ministry of Finance.

(2) A nominating organization referred to in sub-section (1) *other than that which is specified*, shall be appointed for a period of three years by the President exercising his own discretion after taking into account the effectiveness of that organization in serving the public interest, which organization shall nominate its representative to serve on the Council.

(3) Should a nominating organization cease to exist, the President may identify an alternative organization for the balance of the term of the organization being replaced, and the nominee's term on the Council shall be affected accordingly.

(4) An organization within five (5) working days of being appointed by the President shall advise the Procurement Regulator in writing of its nominee to the Council being selected by the President.

(5) The Procurement Regulator shall advise the public of the nominees by a notice in the Gazette and in a major circulating daily newspaper.

(6) Matters pertaining to the operation of the Council are prescribed in the Second Schedule.

(7) The Council shall present an annual report to the Procurement Regulator and include in that report its observations and recommendations on the operation of the systems pertaining to public procurement, and disposal of public property.

Functions and **30.**  
powers of the  
Principles  
National  
Procurement  
Advisory Council

(1) The Council shall meet –

(a) to consider the implementation of the Operating and Objectives, and to advise the Procurement Regulator accordingly;

(b) to make recommendations to the Procurement Regulator for the development of the Guidelines so as to ensure that the Guidelines and other matters in relation to public procurement, and disposal of public property, conform to the Operating Principles and Objectives.

(2) In performing its functions under subsection (1), the Council shall take all reasonable steps to obtain the views of the national community on the operation of the public procurement system.

(3) The Council may invite a representative of an agency to assist in the performance of its functions but the representative shall have no vote.

Secretariat services to be provided by the Procurement Regulator **31.** The Procurement Regulator shall provide the necessary secretariat services to the Council and bear the cost for the operation of the Council.

Procurement Regulator to attend Council **32.** The Procurement Regulator shall attend the meetings of the Council, but shall have no vote.

#### PART VI – MISCELLANEOUS

Protection from liability **33.** *Subject to section 38, no proceedings whatsoever shall lie against a Commission or any person concerned with the administration of this Act for anything that he may do or report or say in the performance of its functions and powers under this Act.*

Privileged information and protection from defamation **34.** *(1) Anything said or information supplied or any document or thing produced by any person in proceedings before a Commission or in the course of any investigation by the Commission shall be absolutely privileged in the same manner as if the proceedings or investigations were in a court of law.*



*(2) For the purposes of defamation proceedings any report made by a Commission or the Procurement Regulator under this Act and any fair and accurate comment concerning that report shall be deemed to be privileged.*

Procurement records to be available to public

**35.** (1) A person may make a request of an agency to supply information and documents relating to a transaction.

(2) The Freedom of Information Act, 1999 applies to a request under subsection (1) as if that request had been made under the Freedom of Information Act, 1999.

(3) An agency shall not withhold disclosure on the grounds of confidentiality because that disclosure may prove embarrassing to the agency.

Agencies to publish award of contracts

**36.** Where an agency awards a contract, the authorized officer of that agency shall cause the public to be advised of that award, the names of the parties, the property or services to be acquired or disposed of, the price, and the performance date of the contract contemporaneously with the making of the award, and the requirements shall apply in respect of any variation of that contract or award.

Application of Judicial Review Act, 2000

**37.** Notwithstanding any other law, the Judicial Review Act, 2000 applies to a decision which arises in the process of procurement in respect of a transaction by an agency.

Reporting to

**38.** (1) Notwithstanding any other written law, where a person has a

Procurement Regulator or Public Procurement Commission of Collusion reasonable belief that collusion between all or any of the interested parties to a transaction, or reasonably believes that an irregularity or a breach of this Act, has occurred, that person shall report accordingly to the Procurement Regulator, or the Public Procurement Commission.

(2) The Procurement Regulator shall refer any report of a breach of this Act to the relevant authorities and to the Public Procurement Commission for prompt attention, and advise accordingly in his report to Parliament.

Offences **39.** (1) A person who exercises undue influence which results in a transaction being in breach of the Operating Principles, Objectives or Guidelines commits an offence.

(2) A person who being or having been an officer of an agency -

(a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or

(b) is in control of financial resources or property disproportionate to his present or past official emoluments, **and**, unless he gives a satisfactory explanation to the Court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control; commits an offence.

**(3)** Where a Court is satisfied in proceedings incurring subsection (2) that, having regard to the closeness of his relationship to the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for, or otherwise on behalf of, the accused or acquired such resources or property as a gift from the accused, those resources or property shall, until the contrary is proved, be presumed to have been in the control of the accused.

General penalty **40.** (1) A person who commits an offence under this Act for which no penalty is prescribed shall be liable to a fine of five hundred thousand dollars and imprisonment for seven (7) years.

(2) An offence attracting a penalty under subsection (1) is a "specified offence" for the purpose and application of the Proceeds of Crime Act, 2000.

Protection for  
whistleblowers

***41. (1) Notwithstanding any other law, a person shall not be discharged, demoted, suspended, threatened, harassed, or financially prejudiced or otherwise discriminated against for making a report under section 38.***

***(2) A person who is discharged, demoted, suspended, threatened, harassed or financially prejudice or otherwise discriminated against for making a report under section 38 shall be reinstated in his original office with no loss of benefit and provided with a public apology by the agency without prejudice to other legal recourse available to him.***

*(3) A person who acting on behalf of an agency discharges, demotes, suspends, threatens, harasses or in any manner discriminates against a person or acts so as to prejudicially impact upon a person's livelihood as a consequence of his making a report under section 38 commits an offence and is liable on summary conviction to a fine of one hundred and fifty thousand dollars (\$150,000) and imprisonment for six (6) months.*

Amendment to Act **42.** A law altering sections 4, 5, 6, 7, 8, 9, and 10 of this Act shall not be passed by Parliament unless the final vote is supported by the votes of not less than two-thirds of the members of each House.

Regulations **43.** The President may make regulations for the giving effect of this Act, and for prescribing anything required or authorized by this Act to be prescribed.

Validation of transactions by agencies outside the jurisdiction of Central Tenders Board Ordinance 1961 **44.** A transaction that is a transaction to which the Central Tenders Board Ordinance, 1961 does not apply and which is entered into or in force in accordance with an agency's tendering rules and procedures at the commencement of this Act, shall be deemed to be performed in accordance with this Act, and to the extent that the transaction is valid at the commencement of the Act, it shall be deemed to be so valid for the purposes of this Act so long as it conforms to section 4 of this Act.

Repeal and savings **45.** (1) The Central Tenders Board Ordinance, 1961 is repealed.  
of transaction within  
the jurisdiction of the  
Central Tenders Board  
Ordinance 1961

(2) At the commencement of this Act a transaction that is entered  
into

by the Director of Contracts, the Central Tenders Board or by any person in  
accordance with the Central Tenders Board Ordinance, 1961, for or on behalf  
of an agency shall be deemed to have been entered in accordance with this  
Act with respect to that agency ***and a reference to the Director of Contracts,  
the Central Tenders Board as the Central Tenders Board Ordinance 1961, as  
the case may be, shall be construed as a reference to the Procurement  
Regulator or this Act as the context demands.***

(3) Notwithstanding the repeal of the Central Tenders Board Ordinance,  
1961, the Central Tenders Board Regulations 1965 and the Central Tenders  
Board (Defence Force and Protective Services) (No 2) Order 1992 shall  
continue to be in effect and shall apply, as appropriate to a transaction to  
which the Central Tenders Board Ordinance, 1961 applied prior to the  
commencement of this Act, until such time as the Guidelines are in force.

Consequential **46.** The Exchequer and Audit Act is amended in section 2 by -

Amendments to (a) adding at the end of the definition of “public money” the following  
the Exchequer words:

and Audit Act “(c) spent or committed for expenditure by or on behalf of an  
Chap. 69:01 accounting officer or a statutory body;

(d) distributed or administered by or on behalf of an accounting officer to a person.”;

(b) by adding at the end of the definition of “revenue” the following **words:**

“received or receivable by an accounting officer or raised by an instrument that is issued by or on behalf of the State from which it can be inferred that the State accepts liability in the case of default”;

(c) by deleting from the definition of “statutory body” **the following words:**

“or similar body corporate established and incorporated by an act” and substituting the words “established by an act or body corporate that is established by under an act including the Companies Act where the Government or any person controlled by the Government is entitled to exercise control directly or indirectly over the affairs of that body”.

## *FIRST SCHEDULE*

*Matters pertaining to the operation, and terms and conditions of the members, of the Public Procurement Commission.*

Period of Appointment      *1. (1) Subject to this Act, a person appointed as a member of the Commission shall hold office for a period of seven (7) years and may be re-appointed for period not exceeding five (5) years but shall not be appointed for more than two (2) consecutive terms.*

*(2) A member of the Commission is deemed to be a person in public life for the purpose of the Integrity in Public Life Act, 2000 and is directly accountable to Parliament for the performance of his functions and powers.*

Remuneration of members of the Commission      *2. (1) Subject to subsection (2), a member of the Commission shall receive such emoluments and be subject to such other terms and conditions as the President may from time to time determines.*

*(2) The emoluments and terms of conditions of a member of the Commission shall not be less than the emoluments which may, from time to time, be payable to a Puisne Judge.*

*(3) The emoluments and terms and conditions of service of a member of the Commission, other than allowances that are not taken into account in computing pensions, shall not be altered to his disadvantage during the period of his appointment or reappointment, as the case may be.*

Voluntary departure from office      *3. A person appointed as a member of the Commission may at his own request be relieved of office by the President and shall in any case, subject to Clause 4, vacate office on attaining the age of seventy (70) years.*

Extension of *the* in limited circumstances      *4. (1) The President may, after consultation with the Prime Minister and the Leader of the Opposition, permit a member of the Commission to continue in office until he has attained a later age, but not exceeding seventy-five (75) years.*

*(2) Notwithstanding that he has attained the age at which he is required to vacate his office, a member of the Commission may continue in office for such period after attaining that age as the President after consultation with the Prime Minister and the Leader of the Opposition, may specify, so that the member can give his decision or conclude any investigation he was conducting before he attained that age.*

Validation of action of member      *5. Nothing done by a member of the Commission shall be invalid by reason only that he has attained the age at which he required to vacate his office.*

Removal of member of the Commission      *6. (1) A member of the Commission may be removed from office for –*

*(a) inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause);*



- (b) trading with the Government of Trinidad and Tobago without the prior approval by resolution of each House of Parliament;*
- (c) bringing the office into disrepute;*

*and shall not be so removed except in accordance with this provision.*

*(2) For the purposes of this clause a Commissioner trades with “the Government of Trinidad and Tobago” if, while holding office as such, he becomes a party to, or is a partner in a firm or a director or manager of a company which to his knowledge becomes a party to, any transaction with the Government of Trinidad and Tobago.*

*(3) If each House of Parliament by resolution decides that the question of removing a person from the Commission ought to be investigated, then the President shall appoint a disciplinary tribunal, which shall comprise a Chairman and not less than two or more than five other members from among persons who hold or have held the office of Judge of a superior court having jurisdiction in civil and criminal matters or a court having jurisdiction in appeals from any such court.*

*(4) The disciplinary tribunal shall enquire into the matter and report on the facts to the President and recommend whether the member of the Commission the subject of the enquiry, ought to be removed from office for the grounds specified in this clause, within three (3) months of being appointed under sub clause (3).*

*(5) If the question of the removal from office of a member of the Commission has been referred to a tribunal appointed under sub clause (3) and the tribunal has recommended to the President that the person appointed as a member of the Commission should be removed from office, the President shall, remove that person from office.*

*(3) The appointment of a member of the Commission and the termination of his appointment whether by death, resignation or otherwise shall be published in the Gazette.*

Suspension of  
*office*

member

*7. Where the question of removing a member of the Commission from office has been referred to a tribunal the President, after consulting with the Prime Minister and the Leader of the Opposition, may suspend him from performing the functions of his office and any such suspension may at any time be revoked by the President after consultation with the Prime Minister and the Leader of the Opposition and shall in any case cease to have effect if the tribunal advises the President that the person ought not be removed from office.*

Disqualification of  
member of  
Commission

*8. (1) No person shall be appointed as a member of the Commission if he is –*

- (a) a member of the Senate or of the House of Representatives,*
- (b) an undischarged bankrupt;*
- (c) has been convicted of any offence involving dishonesty or moral turpitude; or*
- (d) a partner in a firm, or a director or manager of a company which to his knowledge is a party to any transaction with the Government of Trinidad and Tobago, unless, prior to his appointment, he has disclosed the nature of that transaction and interest of such firm or company.*

Member to be  
*devote*

*9. A person appointed as a full time member of the Commission shall*

full time  
*other*

*his time to the appointment and shall not accept paid employment in any capacity during any period in which he holds office and a person appointed as a part-time member of the Commission shall devote his full time to the performance of his duties when acting as a Commissioner.*

Vacancy to be  
filled  
*of the*

*10. (1) Where a vacancy arises in the membership of the Commission the President, after consultation with the Prime Minister and the Leader of the Opposition, may designate one of the part-time members of the Commission to act in that office during that vacancy, until an appointment is made by the President.*

*(2) Where, by reason of illness, absence from the jurisdiction or other sufficient cause a person appointed as a member of the Commission is unable to perform the functions of his office, the President after consultation with the Prime Minister and the Leader of the Opposition, may appoint a part-time Commissioner as he thinks fit, being a person qualified under this Act, to perform those functions as a replacement.*

Staff of  
*necessary*  
Commission

*11. (1) The Commission may appoint and employ persons as are to assist it in the proper performance of its function, at such remuneration, terms and conditions as may be approved by the Commission.*

## **SECOND SCHEDULE**

***Matters pertaining to the operation of the***

***National Procurement Advisory Council***

- |                                 |   |
|---------------------------------|---|
| Tenure of office                | 1. (1) An organization that is represented on the Council may through its nominee hold an office for a period of three (3) years and the organization is eligible for re-appointment for no more than two (2) consecutive terms<br><br>(2) The organization may change its nominee after giving notice to the President and the Procurement Regulator.  |
| Council vacancy                 | 2. (1) The office of a member of the Council shall become vacant –<br><br>(a) if he resigns in writing;<br><br>(b) if his appointment is terminated in accordance with this Schedule.<br><br>(2) If any vacancy occurs in the membership of the Council, that vacancy shall be filled by another nominee of the relevant organization who shall, subject to this Schedule, hold office for the remainder of the period for which the previous member was appointed, and the consequent appointment shall be made in the manner and from the same category of persons as the appointment of the previous member. |
| Gazetting of every appointments | 3. The names of all the members of the Council as first constituted and change of membership following shall be published in the <i>Gazette</i> .   |
| Resignation from                | 4. A member of the Council may at any time resign his office by   |

office instrument in writing addressed to the President and transmitted through the Chairman, and from the date of the receipt by the President of that instrument, the member shall cease to hold office.

Termination of appointment

5. The membership of a person to the Council shall cease if –
- (a) the nominating organization withdraws support from the person who is its nominee on the Council;
  - (b) the nominating organization becomes bankrupt or compounds with or suspends payment to a creditor;
  - (c) the President revokes the organization as a nominating body, which the person represents.
  - (d) that person becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
  - (e) that person is convicted of an offence and sentenced to a term of imprisonment;
  - (f) that person dies.

Procedure of meetings

6. (1) The Council shall meet not less than once a month or as often as may be necessary or expedient for the performance of its functions under this Act, and these meetings may be held at such places and times and on such days as the Council determines.
- (2) The Council shall appoint one of its members as Chairman.
- (3) The Chairman shall preside at all meetings of the Council and if the Chairman is absent from a meeting the members present shall elect another member to preside at that meeting.

- (4) Five members shall constitute a quorum of the Council.
- (5) The decisions of the Council shall be by a majority of votes and in addition to an original Vote, the Chairman or other member presiding at the meeting shall have a casting vote in any case in which the voting is equal.
- (6) Subject to the provision of this Act the Council may regulate its own proceedings
- (7) The validity of any proceedings of the Council shall not be affected by any vacancy among the members or by any defect in the appointment of a member.

Remuneration of members

7. There shall be paid to the members of the Council such remuneration, whether by way of salary, honorarium, travelling or other allowances as the Cabinet determines.

Passed in the House of Representative this .....day of .....2010

*House*

*Clerk of the*

I confirm the above

*Representative*

*Speaker of the House of*

Passed in the Senate this .....day of .....2010

*House*

*Clerk of the*

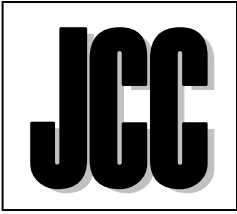
I confirm the above

*Senate*

*President of the*

July 05 2010 – Public Procurement and Disposal of Public Property Act, 2010





## JOINT CONSULTATIVE COUNCIL FOR THE CONSTRUCTION INDUSTRY

The Professional Centre Bldg.

1<sup>st</sup> Floor Unit B202

11-13 Fitzblackman Drive, Wrightson Rd. Ext.

Port of Spain

Tel: (868) 623-9396 Fax: (868) 625-5749 E-mail: [jcctt1@gmail.com](mailto:jcctt1@gmail.com) Website: [jcc.org.tt](http://jcc.org.tt)

11 September, 2012

### JCC PRESS RELEASE

The Joint Consultative Council for the Construction Industry - JCC – is completely opposed to the recently-proclaimed provisions of the Trinidad and Tobago Administration of Justice (Indictable Proceedings) Act 2011 which have the effect of creating a loophole to allow the high-profile persons accused in the Piarco Airport scandal to escape trial. The Bernard Commission was an expensive and critical Enquiry into the Piarco Airport scandal which revealed evidence of massive corruption, bid-rigging, bribe-paying, back-fitting and other practices which amounted to a series of criminal assaults on our nation's Treasury. The JCC played a leading role in calling for and submitting evidence to the Bernard Commission which exposed abuse of power and corrupt practices in some of the highest offices in our country. There have been high-level convictions and imprisonments arising directly from the Bernard Commission, yet there has been no action on effectively prosecuting the accused parties in our own Courts.

***“The effect of the new laws which were proclaimed would have been to create a legal means for those accused persons to escape a trial and oblige the Court to have made a verdict of not guilty. The JCC deploras such an intended result in this matter as being contrary to good order and seemingly intended to promote the notion that white-collar crime pays.”***

The JCC is calling for ***immediate*** corrective action by the Attorney General and the Minister of Justice, including repealing the recently-proclaimed sections of this Act, to ensure that the trials of the Piarco Airport scandal accused can proceed as promised on several occasions to the public. ***Justice must not only be done, it must be seen to be done.*** Even after the necessary immediate corrective action, the JCC is calling on the Prime Minister to make a formal, full statement to the Parliament to give an accounting for the manner in which this most important matter has been handled, including why it was thought advisable to have those particular clauses of this new law proclaimed at the particular moment of celebrating our country's 50th anniversary of Independence.

Association of Professional Engineers of Trinidad & Tobago - Trinidad & Tobago Institute of Architects

Trinidad & Tobago Society of Planners – Trinidad & Tobago Contractors' Association - Institute of Surveyors of Trinidad & Tobago

Trinidad and Tobago Chapter of the International Facility Management Association

Given the specific assurances given to the Parliament as to the pre-conditions to the government's intended proclamation of this new law, the role of the President in assenting to these particular clauses at that particular moment of national celebration and maximum distraction is a matter for serious concern.

***Publish the Bernard Report now***

The JCC is repeating its call for the immediate publication of the full Report of the Bernard Commission into the Piarco Airport scandal.

***Implement the Uff Report recommendations now***

***The JCC is calling on this administration to implement the Uff Report recommendations now as promised in the 2010 election campaign. The JCC completely rejects the position of the Minister of Justice that the Joint Select Committee on Public Procurement and Disposal of Public Property is handling that implementation process. Only one of the 91 recommendations of the Uff Report has any relation to the work of that Joint Select Committee, so those need to be implemented now.***

***If this administration is serious about attacking the wave of white-collar crime which is drowning our country, the Uff Report recommendations will be implemented now.***

**Public Procurement reform now**

The JCC is renewing its call for the immediate implementation of a new Public Procurement system to eliminate the waste and theft of Public Money. This administration campaigned on a promise to implement the new Public Procurement system within one year of the May 2010 election, so we are way overdue for those new laws.

The JCC and its colleagues in the Private Sector/Civil Society group have submitted a complete DRAFT BILL to the Joint Select Committee, so that needs to become law now.

***If this administration is serious about attacking the wave of white-collar crime which is drowning our country, the DRAFT BILL on Public Procurement and disposal of Public Property as prepared by the Private Sector/Civil Society group will be immediately tabled in Parliament for debate and enactment***

In this, our nation's 50th year of independence, our Parliament re-convened during its vacation to approve Financial laws on the request of a foreign government.

Association of Professional Engineers of Trinidad & Tobago - Trinidad & Tobago Institute of Architects –

Trinidad & Tobago Society of Planners – Trinidad & Tobago Contractors' Association - Institute of Surveyors of Trinidad & Tobago

Trinidad and Tobago Chapter of the International Facility Management Association

**The JCC is calling for Parliament to be reconvened for the immediate correction of this gross error in proclaiming this new law.**

**The JCC is also calling on this administration to make the passing of new Public Procurement laws an urgent priority.**

Thank you for your support on these important issues of national development.

Association of Professional Engineers of Trinidad & Tobago - Trinidad & Tobago Institute of Architects

Trinidad & Tobago Society of Planners – Trinidad & Tobago Contractors' Association - Institute of Surveyors of Trinidad & Tobago

Trinidad and Tobago Chapter of the International Facility Management Association